REPORT

OF THE

CHEROKEE nation. DELEGATION

OF THEIR

MISSION TO WASHINGTON,

IN

1868 and 1869.

REPORT.

TO THE NATIONAL COUNCIL OF THE CHEROKEE NATION AND TO THE CHEROKEE PEOPLE.

The undersigned, your Chief and Delegates, appointed by acts of the National Council, of dates of December 11th, 1867, and September 28th, 1868, would respectfully report:

That in September of last year, at a special council for that purpose, they made their report, which was received and adopted. That report gave a history of our proceedings and progress in the discharge of our duties as your public servants as far as they at that time had been consumated, and exhibited the fact that the vexed question, in reference to the Cherokee "Neutral Lands" had been settled with the United States Government, and all parties interested in the same upon a basis both honorable and profitable to the Cherokees, and thus extricating the Cherokees from embarrassments in reference to these lands that had been for many years a sourse of great expense and annoyance to them. Appendix No. 1, 2, and 3.

It will be seen that this arrangement will insure to the Cherokees for their "Neutral Lands" not less than one million of dollars, drawing interest from the 6th of June, 1868. Our report, alluded to, of last September, will show that after months of ceaseless vigilance and exertions, we negotiated a treaty with the Commissioner, on part of the United States, which passed the departments of the Government, and in July last was transmitted by the President of the United States, with his approval, to the United

States Senate for ratification. This treaty provides for indemnity to the Cherokees, for all of their lands west of 96th degree of west longitude and their "strip" of land in Kansas, disposed of by our treaty of 1866, and also provides to so dispose of our "Neutral Lands," as to forever guard the Cherokees from any probability of embarrassment in reference to them hereafter. It also provides for a fair and just settlement of *all claims and demands* of the Cherokee Nation or any of its citizens against the United States or any individual State thereof.

It also proposes to settle all questions between the courts of the Cherokee Nation and those of the United States, in reference to jurisdiction ever Cherokee citizens. It also provides to abolish all distinction among the Cherokees, and to make them a united and prosperous people, and, in our opinion, is clearly a solution of the entire Cherokee question, upon terms honorable and just, alike to the Cherokees and the United States. Appendix No. 4.

Moreover, by this treaty your Delegation succeeded through a series of aguments and efforts, extending through several months of time, involving an extensive and complicated field of research for legal authorities in gaining for the Cherokees west of the 100th degree of west longitude, not less than twelve million of acres of land, including the "Pan-handle" of Texas, a part of New Mexico, as far west as the *Rio Grande river*, and a strip of land in *Colorado*. The only "LETTERS PATENT" issued by the Government of the United States, during the administration of President Van Buran to the Cherokees for their lands according to our treaty stipulations, only cover or acknowledge our right to lands as far west as the 100th meridian of west longitude, and the Commissioner negotiating with us, on the part of the United States, was persistant and tenacious in his endeavors to confine the western boundary of the Cherokee domain to that meridian. But, as before stated, after diligent

search for and the production of numerous legal authorities, as to the correct western boundary line of the United States, when our treaties of 1828, '33, '35, '36, and '40 were made, and which treaties fixed the Cherokee domain as far west as the "*right of soil*" of the United States extended at their respective dates. Your Delegation *forced* the said Commissioner, on the part of the United States, to acknowledge an addition to the Cherokee domain west of the 100th meridian of west longitude, embracing, as before stated, not less than twelve million acres of land, worth not less than two million of dollars, at the reduced price the United States is giving for Indian lands. Appendix No. 5 and 6.

On our late arrival in Washington, in January last, we found the ratification of our treaty by the United States Senate much opposed and embarrassed by at least five elements of formidable opposition:

1st. *By the North Carolina Cherokees.*

2d. *By the squatters* (25,000 *in number*) *on the Cherokee Neutral Lands.*

3d. *By a sentiment pervading Congress to the effect that Indians have no title to their lands, and have really no right to make treaties.*

4th. *By a party of politicians who are in favor of destroying our nationality, and establishing in its place a territorial form of government.*

5th. *By a party in the interest of a railroad contract entered into in October,* 1866, *between certain parties of the Cherokee Nation and N. S. Goss and P. B. Maxon, representing the "Union Pacific Railway, Southern Branch, Company," and which contract became void by its terms, and was cancelled by the National Council in December,* 1867.

The advocates of this railroad contract took the ground that it was still binding, and that according to its terms the sum of five hundred thousand dollars ($500,000) from the proceeds of our country west of the 96th degree of west

longitude, and also 1,250,000 acres of land west of 96th degree of west longitude, were applicable to its terms, instead of being otherwise applied, as our new treatry provides.

And against all of this combined opposition your delegation maintained an incessant struggle, from the time of their late arrival in Washington up to the time of the adjournment of the United States Senate, on the 22d of April last. Memorials and petitions of various kinds, from time to time, were filed before the departments of United States Government, as well as before both Houses of Congress, urging the ratification of our treaty, and vindicating fully all the rights of the Cherokees, both *public and private.* (Appendix, Nos. 7 to 19.)

Thus, it will be seen, that while your delegation were laboring for the ratification of our new treaty, in order to have the entire interest of the Cherokee people secured, and to receive pay for their lands west of 96 *degrees west longitude, which had been set apart, and really designated and fixed for the occupancy and homes of the Comanches, Kiawas, Chians, Arapahoes, and Osages, according to our treaty of* 1866*; and for our lands in Kansas, Texas, New Mexico, and Colorado; they also had to struggle for the very existence of the Cherokee Nation, and to use all the influence they could possibly bring to bear to sustain our old and long-established treaties with the United States.*

On account of the great mass of executive business incident to the present administration of the United States Government, and other treaties that, in the order of time and business, claimed precedence over our treaty, it could not be presented by the Senate Indian Committee to the Senate for ratification previous to its adjournment. Our treaty, with such others as were before the said committee, and a vast amount of other executive business, was laid over until the next sesssion of Congress for final action. But your

delegation have obtained from the said committee, and the departments, and from the President of the United States, such written assurances as are equivalent to the ratification of our treaty; and as, in our opinion, are a guarantee that the Cherokees will be secured in all of their rights. (Appendix, Nos. 19, 20, 21.

In conclusion, your delegation called upon the President of the United States, through the Commissioner of Indian Affairs, for protection from intrusions from the whites that are aggressing upon our lands.

Very respectfully,

Your obedient servants,

LEWIS DOWNING,
Principal Chief Cherokee Nation.

H. D. REESE,
WM. P. ADAIR,
SAMUEL SMITH,
J. PORUM DAVIS,
ARCH. SCRAPER,
Cherokee Delegation.

Appendix No. (22.)

APPENDIX

TO THE

REPORT OF THE CHEROKEE DELEGATION, 1869.

No. 1.

AN ACT APPOINTING A DELEGATION.

1. *Be it enacted by the National Council,* That a delegation of seven persons be appointed to proceed to Washington City to represent the Cherokee nation, and bring to a satisfactory settlement all business of the Cherokee nation with the Government of the United States, and to secure the fulfillment of all business falling under the provision of the treaty of July 19, 1866.

2. *Be it further enacted,* That it shall be the duty of said delegation to secure back annuities due to the Cherokee Nation, and payable to them by treaty, and withheld during the war.

3. *Be it further enacted,* That said delegation are hereby empowered to prosecute and secure all claims for horses, provisions, and other military supplies and stores furnished the armies of the United States, and remaining unpaid.

4. *Be it further enacted,* That said delegation shall have power to prosecute and secure all claims for horses. cattle, or other property taken from the citizens of the Cherokee Nation, and to proceed in the Court of Claims, or before any proper authority of the United States, and prosecute such claims, and secure indemnification therefor.

5. *Be it further enacted,* That said delegation are empowered to make necessary arrangements with the Government of the United States, or with any tribe of Indians desiring to settle in the Cherokee country for the settlement of the same, to consult with them, or make needful arrangements, subject to the approval of the United States and the Cherokee Council.

Said delegation shall also have power to prosecute all claims for losses of the Cherokee people caused by the United States, or resulting from the abandonment of the Indian territory by the United States troops, or from want of (the) proper protection guaranteed to the Cherokees by its treaties with the United States; and to secure indemnification to its people for such losses; and to prosecute such other business as may be delegated to them by the National Council.

6. *Be it further enacted,* That said delegation shall be authorized to employ an attorney or attorneys to aid them in the prosecution of such business, as herein, or (is) hereinafter delegated to them.

7. *Be it further enacted,* That said delegation shall have power to make all necessary negotiation in reference to the sale or disposal of the lands belonging to the Cherokee Nation, lying west of 96° west longitude, including what is known as the Cherokee outlet.

8. *Be it further enacted,* That said delegation be, and they are hereby allowed as compensation the sum of three dollars per day, while in actual service, exclusive of all necessary expenses while absent on their mission; and the said delegation are required to make a full report of such necessary expenses to the next annual session of the National Council.

9. *Be it further enacted,* That in the event of any vacancies occurring in said delegation, the principal Chief is hereby authorized to fill said vacancy. That the principal Chief be authorized to accompany the delegation.

10. *Be it further enacted,* That the delegation is hereby authorized to enter into a new treaty with the Government of the United States, if advisable, or (to) make any alteration in the treaty of July 19, 1866, whichever may be (the) most satisfactory.

11. *Be it further enacted,* That the principal Chief is authorized to draw warrants in favor of the delegation for their services and expenses whenever it is required.

TAHLEQUAH, CHEROKEE NATION,
December 11, 1867.

STEPHEN FOREMAN,
Clerk of the Senate.

JAMES McDANIEL,
President of Senate.

Concurred in:

T. B. WOLFE,
Clerk of the Council.
ARCH SCRAPER,
Speaker of Council pro tem.

Approval:

LEWIS DOWNING,
Principal Chief of the Cherokee Nation.

OFFICE OF THE EXECUTIVE DEPARTMENT
OF THE CHEROKEE NATION,
December 20, 1867.

This is to certify that the foregoing is a true copy of the original as on file, and of record in this office.

By authority:

W. L. G. MILLER, M. D.
Executive Secretary.

AN ACT TO RE-APPOINT A DELEGATION.

Whereas it is recommended by the principal Chief in his message of the 22d instant, that the late delegation be re-appointed: Therefore,

Be it enacted by the National Council, That John P. Davis, Arch Scraper, W. P. Adair, H. D. Reese, and Samuel Smith be, and they are hereby re-appointed a delegation to visit Washington city, accompanied by the principal Chief.

TAHLEQUAH, C. N., *September* 28, 1868.

STEPHEN FOREMAN,
Clerk of the Senate.
PIG SMITH,
President of the Senate.

Concurred in:

T. B. WOLFE,
Clerk of Council.
ARCH SCRAPER,
Speaker of Council pro tem.

Approved:

LEWIS DOWNING,
Principal Chief of the Cherokee Nation.

OFFICE OF THE EXECUTIVE DEPARTMENT
OF THE CHEROKEE NATION,
Tahlequah, December 4, 1868.

I hereby certify that the foregoing is a true copy of the act as registered in this office, and of the original.

W. L. G. MILLER,
Executive Secretary.

AN ACT TO INSTRUCT THE CHEROKEE DELEGATION.

Whereas a delegation representing the full interests of the Cherokee Nation and people before the Government of the United States, under an act of the National Council of December 11, 1867, have recently visited the City of Washington in the performance of the duties of their mission, and have reported accordingly; and whereas the duties of the said delegation are still unfinished, and the National Council have authorized Lewis Downing (principal Chief,) H. D. Reese, Samuel Smith, Arch Scraper, J. P. Davis, and W. P. Adair, of said delegation, to return to the City of Washington, and to bring to a satisfactory adjustment and conclusion the interests of the Cherokee nation and people, still unfinished by them: Therefore,

Be it enacted by the National Council, That the said delegation be, and they are hereby instructed to carry out the instructions of the said act of the National Council, of December 11, 1867, at their earliest opportunity, and to make their report accordingly as soon after the object of their mission shall have been completed, as is practicable.

Be it further enacted, That the delegation is hereby further instructed to protest against the claim of the North Carolina Cherokees for an equal proportion according to numbers to the lands, annuities, and other moneys belonging to the Cherokee Nation.

TAHLEQUAH, C. N., 1*st October*, 1868.

Approved:

LEWIS DOWNING,
Principal Chief of the Cherokee Nation.

OFFICE OF THE EXECUTIVE DEPARTMENT
OF THE CHEROKEE NATION,
Tahlequah, December 4, 1868.

I hereby certify that the foregoing is a correct copy of

the act as passed by both Houses of the National Council, and as registered in this office.

W. L. G. MILLER,
Executive Secretary.

No. 2.

WASHINGTON, D. C., *February 26th*, 1868.

To His Excellency, Andrew Johnson, President of the United States:

SIR: The undersigned delegates, representing the Cherokee Nation, animated by an earnest desire to preserve the harmony which now so happily subsists in their Nation, respectfully beg leave to call your excellency's attention to the great necessity which exists for a new treaty with the Government by which alone that harmony can be preserved and the interests of all the Cherokees permanently protected.

The treaty of 1866, between the Cherokees and the Government, was concluded at a time when there were two rival factions or parties in the Cherokee Nation, and discriminations were made therein, which are not now necessary, and which should therefore be abolished. It is the desire of the Nation, in the interests of the United States as well as its own, that provision shall be made in the contemplated treaty:

1st. For a proper and amicable disposition of what is known as the "Cherokee Neutral Lands," in Kansas, which have been twice sought to be disposed of by the Secretary of the Interior, and which, consequently, are now the subject of litigation; also of the "Cherokee Strip" of lands adjacent to said "Neutral Lands."

2d. For the reception of such civilized Indians as may desire to reside with the Cherokees, according to their treaty of 1866.

3d. For the disposition of the Cherokee lands lying west of 96° west longitude, set apart by the Government for friendly Indians in 1866, by said treaty.

4th. For carrying out the provisions of the treaty of 1866, in relation to the right of way to railroads through the Cherokee country.

5th. For the removal of the many ambiguities in the treaty of 1866 between the Government and the Cherokees; and, in that connection, to make such arrangements as will obviate

all conflict of jurisdiction between the courts of the United States and those of the Cherokee Nation.

In addition to which there are various unsettled claims of the Cherokees against the Government of the United States which ought to be adjusted, and which doubtless it is the desire of the Government to settle. For the above-named reasons, the undersigned would respectfully request, that the Hon. Commissioner of Indian Affairs be instructed to open negotiations with the Cherokee Nation, through the undersigned delegates, with a view to secure the objects set forth.

We have the honor to be, your excellency's obedient servants,

LEWIS DOWNING,
Principal Chief,
H. D. REESE,
WM. P. ADAIR,
SAMUEL SMITH,
J. P. DAVIS,
ARCHY SCRAPER,
E. C. BOUDINOTT,
JO. A. SCALES,
Cherokee Delegates.

DEPARTMENT OF THE INTERIOR,
OFFICE INDIAN AFFAIRS,
Washington, D. C., March 10th, 1868.

GENTLEMEN: Your communication of the 26th of February last, to the President in behalf of the Cherokee Nation of Indians, proposing new treaty negotiations between the United States and said Cherokee Nation, having been by you left in this office, was sent to the Secretary of the Interior, and was by him referred to the President for his direction in the premises.

The enclosed copy of a letter to this office from the Secretary of the Interior, under date of the 3d instant, will inform you that the President has authorized this office to open treaty negotiations with the Cherokee Nation, therefore, I am ready to receive from you, as the representatives of the Cherokee Nation of Indians, any propositions you may chose to submit in regard to a new treaty between the United States and said Cherokee Nation, with the understanding

that the *status* of the Neutral Lands is to remain undisturbed, unless Mr. Joy, the purchaser, should consent to relinquish his contract for said lands.

Very respectfully, your obedient servant,

N. G. TAYLOR, *Commissioner.*

LEWIS DOWNING,
M. D. REESE, and others,
Cherokee Delegates, Present.

DEPARTMENT OF THE INTERIOR,
Washington, D. C., March 3d, 1868.

SIR: In the altered circumstances of the Cherokee Nation, a new treaty between them and the United States has become a necessity. The treaty of 1866 is obscure, ambiguous, and complicated; difficult to be understood, and impossible to be executed. It ought to be superseded by one plain and simple in its terms and conditions, and which can easily be carried into effect.

I am authorized by the President to direct you to open negotiations with the Cherokees for a new treaty, as requested by them in their letter addressed to him on the 26th ultimo, a copy of which is herewith.

In doing this, however, I desire to call your attention to the fact, that the "Cherokee Neutral Lands," referred to in said letter, ought not to be regarded as a subject of negotiation between the United States and the Cherokees.

That land has been sold by the Secretary of the Interior, in strict conformity with the provisions of the treaty of 1866, and good faith requires that the contract shall be observed.

The United States and Cherokees have no right to set it aside without the consent of the other contracting party.

It may be that Mr. Joy, the purchaser, will be willing to relinquish his contract, but without his consent to that effect it should not be disturbed.

But, even if the full right to annul the contract and resume dominion over the land existed, it would not be to the interest of the Cherokees to do so. It is by no means probable that the lands could again be disposed of on terms so favorable to them, or made to yield as large a net product as will be realized under the existing contract.

From this contract all lands which were settled upon at the ratification of the treaty are excepted. They are to be paid for at their appraised value. They comprise, doubtless, the best lands upon the tract.

Since the ratification of the treaty many other settlers have gone upon the reserve, and, at the present time, all, or nearly all, the choice lands are thus occupied.

The settlers are clamorous to have what they consider their rights secured to them, and easy terms of purchase made; and no treaty will be likely to be ratified which does not contain advantageous stipulations in favor of those now on the lands.

Thus the inferior and unsaleable lands will all be left upon the hands of the Cherokees.

It will require years to dispose of them, which can be done then only at low and unremunerative prices, if indeed they can be sold at all.

I am satisfied that more will be realized from the lands under the existing contract than they will be made to produce under any other arrangement if this contract be set aside.

In the event, therefore, of negotiations being opened, attention is earnestly invited to a consideration of these suggestions.

Very respectfully, your obedient servant,

O. H. BROWNING, *Secretary.*

Hon. N. G. TAYLOR,
Commissioner of Indian Affairs.

No. 3.

Supplemental article to the Treaty of July 19, 1866, *between the United States of America and the Cherokee Nation of Indians. Concluded April* 27, 1868; *Ratification advised June* 10, 1868; *Proclaimed June* 10, 1868.

ANDREW JOHNSON, *President of the United States of America,*

To all and singular to whom these presents shall come, greeting:

Whereas to a treaty concluded at the City of Washington, in the District of Columbia, on the nineteenth day of July, in the year of our Lord one thousand eight hundred and sixty-six, between the United States of America and the Cherokee Nation of Indians, through their respective representatives, a supplemental article was made and concluded at the City of Washington, in the District of Columbia, on the twenty-seventh day of April, in the year of our Lord

one thousand eight hundred and sixty-eight, by and between Nathaniel G. Taylor, Commissioner, on the part of the United States, and Lewis Downing, H. D. Reese, Samuel Smith, Wm. P. Adair, J. P. Davis, Elias C. Boudinot, J. A. Scales, and Arch. Scraper, delegates of the said Cherokee Nation of Indians, on the part of said Indians, and duly authorized thereto by them, which supplemental article of treaty is in the words and figures following, to wit:

Supplemental article to a treaty concluded at Washington City July 19th, A. D. 1866; ratified with amendments July 27th, A. D. 1866; amendments accepted July 31st, A. D. 1866; and the whole proclaimed August 11th, A. D. 1866, between the United States of America and the Cherokee Nation of Indians.

Whereas under the provisions of the 17th article of a treaty and amendments thereto made between the United States and the Cherokee Nation of Indians, and proclaimed August 11th, A. D. 1866, a contract was made and entered into by James Harlan, Secretary of the Interior, on behalf of the United States, of the one part, and by the American Emigrant Company, a corporation chartered and existing under the laws of the State of Connecticut, of the other part, dated August 30th, A. D. 1866, for the sale of the so-called "Cherokee Neutral Lands," in the State of Kansas, containing eight hundred thousand acres, more or less, with the limitations and restrictions set forth in the said 17th article of said treaty as amended, on the terms and conditions therein mentioned, which contract is now on file in the Department of the Interior.

And whereas Orville H. Browning, Secretary of the Interior, regarding said sale as illegal and not in conformity with said treaty and amendments thereto, did, on the ninth day of October, A. D. 1867, for and in behalf of the United States, enter into a contract with James F. Joy, of the city of Detroit, Michigan, for the sale of the aforesaid lands on the terms and conditions in said contract set forth, and which is on file in the Department of the Interior.

And whereas, for the purpose of enabling the Secretary of the Interior, as trustee for the Cherokee Nation of Indians, to collect the proceeds of sales of said lands and invest the same for the benefit of said Indians, and for the purpose of preventing litigation and of harmonizing the conflicting

interests of the said American Emigrant Company and of the said James F. Joy, it is the desire of all the parties in interest that the said American Emigrant Company shall assign their said contract and all their right, title, claim, and interest in and to the said "Cherokee Neutral Lands" to the said James F. Joy, and that the said Joy shall assume and conform to all the obligations of said company under their said contract, as hereinafter modified:

It is, therefore, agreed, by and between Nathaniel G. Taylor, Commissioner on the part of the United States of America, and Lewis Downing, H. D. Reese, Wm. P. Adair, Elias C. Boudinot, J. A. Scales, Archie Scraper, J. Porum Davis, and Samuel Smith, Commissioners on the part of the Cherokee Nation of Indians, that an assignment of the contract made and entered into on the 30th day of August, A. D. 1866, by and between James Harlan, Secretary of the Interior, for and in behalf of the United States of America, of the one part, and the American Emigrant Company, a corporation chartered and existing under the laws of the State of Connecticut, of the other part, and now on file in the Department of the Interior, to James F. Joy, of the city of Detroit, Michigan, shall be made; and that said contract, as hereinafter modified, be and the same is hereby, with the consent of all parties, reaffirmed and declared valid; and that the contract entered into by and between Orville H. Browning, for and in behalf of the United States, of the one part, and James F. Joy, of the city of Detroit, Michigan, of the other part, on the 9th day of October, A. D. 1867, and now on file in the Department of the Interior, shall be relinquished and cancelled by the same James F. Joy, or his duly authorized agent or attorney; and the said first contract as hereinafter modified, and the assignment of the first contract and the relinquishment of the second contract, are hereby ratified and confirmed, whenever said assignment of the first contract and the relinquishment of the second shall be entered of record in the Department of the Interior, and when the said James F. Joy shall have accepted said assignment and shall have entered into a contract with the Secretary of the Interior to assume and perform all obligations of the said American Emigrant Company under said first-named contract, as hereinafter modified.

The modifications hereinbefore mentioned of said contract are hereby declared to be—

1. That within ten days from the ratification of this supplemental article the sum of seventy-five thousand dollars shall be paid to the Secretary of the Interior as trustee for the Cherokee Nation of Indians.

2. That the other deferred payments specified in said contract shall be paid when they respectively fall due, with interest only from the date of the ratification hereof.

It is further agreed and distinctly understood that, under the conveyance of the "Cherokee Neutral Lands" to the said American Emigrant Company, "with all beneficial interests therein," as set forth in said contract, the said company and their assignees shall take only the residue of said lands after securing to "actual settlers" the lands to which they are entitled under the provisions of the 17th article and amendments thereto of the said Cherokee treaty of August 11th, 1866; and that the proceeds of the sales of said lands, so occupied at the date of said treaty by "actual settlers," shall enure to the sole benefit of, and be retained by, the Secretary of the Interior as trustee for the said Cherokee Nation of Indians.

In testimony whereof, the said Commissioners on the part of the United States, and on the part of the Cherokee nation of Indians, have hereunto set their hands and seals, at the City of Washington, this 27th day of April, A. D. 1868.

N. G. TAYLOR,
Commissioner in behalf of the United States.

LEWIS DOWNING,
Chief of Cherokees.

H. D. REESE,
Chmn. of Delegation.

SAMUEL SMITH,
WM. P. ADAIR,
J. P. DAVIS,
ELIAS C. BOUDINOT,
J. A. SCALES,
ARCH. SCRAPER, *Cherokee Delegates.*
Delegates of the Cherokee Nation.

In presence of—
H. M. WATTERSON,
CHARLES E. MIX.

And whereas the said supplemental article of treaty having been submitted to the Senate of the United States for its constitutional action thereon, the Senate did, on the sixth day

of June, one thousand eight hundred and sixty-eight. advise and consent to the ratification of the same, by a resolution in the words and figures following, to wit:

IN EXECUTIVE SESSION,
SENATE OF THE UNITED STATES,
June 6, 1868.

Resolved, (two-thirds of the Senators present concurring,) That the Senate advise and consent to the ratification of the supplemental article [concluded April 27, 1868] to a treaty between the United States and the Cherokee nation of Indians, concluded at Washington City, July 19, 1866; ratified with amendments July 27, 1866; amendments accepted July 31, 1866, and the whole proclaimed August 11, 1866.

Attest:

GEO. C. GORHAM,
Secretary.

Now, therefore, be it known that I, ANDREW JOHNSON, President of the United States of America, do, in pursuance of the advice and consent of the Senate, as expressed in its resolution of the sixth of June, one thousand eight hundred and sixty-eight, accept, ratify, and confirm the said supplemental article of treaty as aforesaid.

In testimony whereof, I have hereto signed my name and caused the seal of the United States to be affixed.

Done at the City of Washington, this tenth day of June, in the year of our lord one thousand eight hun-
[SEAL.] dred and sixty eight, and of the Independence of the United States of America the ninety-second.

ANDREW JOHNSON.

By the President:
WILLIAM H. SEWARD,
Secretary of State.

This agreement, made this 30th day of August, A. D. 1866, by and between James Harlan, Secretary of the Interior, on behalf of the United States on the one part, and the American Emigrant Company, a corporation chartered and existing under the laws of the State of Connecticut, of the other part—witnesseth:

That the said Harlan agrees to sell, and hereby doth sell, to the said company all that tract of land known as the "Cherokee Neutral Land," in the State of Kansas, contain-

ing (800,000) eight hundred thousand acres, more or less, with the limitations and restrictions set forth in the seventeenth article of a treaty between the United States and said Cherokee Indians, ratified on the 11th day of August, A. D. 1866, as amended by the United States Senate, with all beneficial interest therein, at the rate of one dollar per acre in lawful money of the United States, to be paid to the Secretary of the Interior in trust for said Indians, as hereinafter set forth—viz: Twenty-five thousand dollars on the execution hereof, twenty five thousand dollars on the approval of the surveys of said lands by the Commissioner of the General Land Office, and twenty-five thousand dollars on the 30th day of August, 1867, seventy five thousand dollars on the 30th day of August, 1868, seventy-five five thousand dollars on the 30th day of August, 1869, seventy-five thousand dollars on the 30th day of August, 1870, and one hundred thousand dollars per annum thence afterwards until the whole shall be paid, each of said several sums to draw interest at the rate of five per cent per annum from the date of the approval of the surveys as aforesaid.

The said American Emigrant Company agreed to pay the said several sums of money, with interest thereon, as aforesaid, to the said Secretary, in Washington, in lawful money of the United States, as the same shall become due—the said interest on each and all deferred payments to be paid annually on the first day of July.

The United States agrees to cause said lands to be surveyed as public lands are usually surveyed in one year from the date hereof, and, on the payment of fifty thousand dollars, to set apart for said company a quantity of said lands in one body, in as compact form as practicable, extending directly across said lands from east and west, and containing a number of acres equal to the number of dollars then paid, and from time to time to convey the same by patent to said company or its assigns whenever afterwards requested so to do, in such quantities by legal sub-divisions as said company shall indicate; and on the payment of each additional instalment, with interest as herein stipulated, to set apart for said company an additional tract of land in compact form, where said company may request, but extending directly across the said Neutral Lands from east to west, containing a number of acres equal to the number of dollars of principal thus paid, and to convey the same to said company or its assigns, as

herein before described, and so on from time to time until the whole shall be paid, and no conveyance of any part of said lands shall be made, until the same shall be paid for as provided in this agreement, but said company may make payments at earlier periods than those indicated, or pay the whole principal and interest and receive titles of tracts of land accordingly, if they shall so elect.

In witness whereof, said Harlan has hereunto affixed his name and the seal of the Department of the Interior of the United States, and the said Emigrant Company has also, by Franklin Chamberlin, a director of said company, thereto lawfully authorized by vote of said company, (a copy whereof is hereto annexed,) duly affixed the name and seal of said company, the day and year first above written.

Executed in presence—

WM. PENN CLARKE.

JAMES HARLAN,
Secretary of the Interior.

AMERICAN EMIGRANT COMPANY,
BY F. CHAMBERLIN,
Director and Attorney in fact.

At a meeting of the directors of the American Emigrant Company, held at the office of the company in New York, on the 28th day of August, 1866, present: Messrs. Harris, Chamberlin, William Savery, and Hooker:

Voted, that F. Chamberlin, Esq., one of the directors of the American Emigrant Company, be, and he is hereby authorized, to negotiate and execute, in the name and behalf of the company, a contract with the United States Government for the purchase of the Cherokee Neutral Lands in the State of Kansas, at such price per acre and payable upon such terms as may be agreed upon.

A true copy of the original vote—Attest:

JOHN HOOKER, Secretary.

RESOLVE

Incorporating the "American Emigrant Company."

GENERAL ASSEMBLY, MAY SESSION, A. D. 1863.

Resolved by this Assembly:

SEC. 1. That Andrew G. Hammond, Francis Gillette, John Hooker, Franklin Chamberlin, and Henry K. W. Welch, all of the city of Hartford, in this State; Samuel P. Lyman, of the city and State of New York; and Ferdinand C. D.

McKay, James C. Savery, and Tallmadge E. Brown, all of the city of Des Moines, in the State of Iowa, and their successors and assigns, be, and they are hereby, made a corporation, under the name of the American Emigrant Company, for the purpose of procuring and assisting emigrants from foreign countries to settle in the United States, especially in the Western States and Territories of the same, with power to purchase lands and dispose of the same for actual settlement where there is nothing in the laws of the States or Territories where such lands shall be situated that shall forbid such purchase or holding, or where license shall be obtained from any such States or Territories authorizing such purchase and holding, and with all the usual corporate powers necessary and proper to carry out the objects of the corporation.

SEC. 2. The capital stock of said company shall not exceed one million of dollars, and shall amount to one hundred and eighty thousand dollars before said company shall commence operations. The capital shall be divided into shares of one hundred dollars each, which shall be transferable in writing, in such mode as the by-laws of the company shall prescribe.

SEC. 3. The company shall have power to enact by-laws not inconsistent with the provisions of this charter nor with the laws of this State or the United States, prescribing the mode of electing its officers and tneir duties, the number of directors, the time and place of the annual meetings, the manner of calling special meetings, the mode of transfering the stock of the company, and generally with regard to the manner of conducting the business of the company.

SEC. 4. The officers of the company shall consist of a president, vice president, treasurer and secretary, and a board of directors, who shall have the usual powers of such officers.

SEC. 5. At all meetings of the company the stockholders shall vote by shares, and any stockholder not present may vote upon his stock by proxy, the authority in such case to be given in such manner as shall be prescribed by the by-laws.

SEC. 6. The first meeting of the company shall be holden at the Exchange Bank, in the city of Hartford, on the first Monday in July, 1863, at 2 o'clock in the afternoon, at which meeting the officers of the company shall be elected, who shall hold office until the next annual meeting.

SEC. 7. The directors of the company shall, within four months after the first day of January in each year, lodge in the office of the Secretary of this State a certificate, signed and sworn to by the secretary of the company, or by two of the directors, stating so nearly as can be ascertained the amount and general character of the assets of the company and the amount of its liabilities, and in case such certificate shall not be so made and lodged, the directors of the company for the time being shall be personally liable for all debts of the company contracted during the time of such neglect.

SEC. 8. This act shall take effect from its passage, and may be altered, amended, or repealed at the pleasure of the General Assembly.

Resolution amending the charter of the American Emigrant Company.

GENERAL ASSEMBLY, MAY SESSION, A. D. 1865.

Resolved by this General Assembly:

SEC. 1. That the American Emigrant Company, incorporated by resolution of the General Assembly at its session in May A. D. 1863, shall have power, in addition to the powers conferred by the original charter, to make contracts for the chartering of steamships and other vessels for the transportation of imigrants, to purchase, own, and run such vessels for such purpose; to deal in passenger tickets for the foreign and inland transportation of emigrants by land and water; to buy and sell foreign bills of exchange; to take charge of, dispatch, and deliver goods transmitted between this and other countries, and to act as agents for the sale of lands in all parts of the country to emigrants, settlers and others.

SEC. 2. Said company shall also have power to make contracts for improvements upon lands held by them for sale to emigrants, and to buy and hold sheep and other stock, for the purpose of selling or letting the same to emigrants and other settlers.

HARTFORD, CONN., *June* 6, 1868.

For value received, the American Emigrant Company, a corporation chartered and existing under the laws of the State of Connecticut, do hereby assign and transfer unto James F. Joy, of the city of Detroit, Michigan, all the right, title, claim, or interests which the said American Emigrant Company has in or to a certain contract made and entered

into on the 30th day of August, 1866, with James Harlan, Secretary of the Interior, on behalf of the United States for the sale of the Cherokee Neutral Lands.

And do transfer to said James F. Joy the credit and benefit of the seventy-five thousand dollars which was paid to the Secretary of the Interior in trust for said Indians at the execution of said contract on the 30th day of August, 1866, and to be applied as a portion of the seventy-five thousand dollars named in article first of the modifications in the supplemental article to a treaty dated April 27th, 1868, signed by N. G. Taylor, Commissioner, and others.

In witness whereof the American Emigrant Company has hereto, by the hand of George M. Bartholomew, President of said company, thereto duly authorized, duly affixed its name and seal, the date and year first above written.

THE AMERICAN EMIGRANT COMPANY,
By GEO. M. BARTHOLOMEW, [SEAL.]
President.

Witness:
J. B. GRINNELL.

{ U. S. Revenue }
{ 5 ct. Stamp. }

Whereas, on the 30th day of August, A. D. 1866, an agreement was made between James Harlan, then Secretary of the Interior, on behalf of the United States of the one part, and the American Emigrant Company on the other part, wherein the said Harlan agreed to sell, and thereby did sell to the said company all that tract of land known as "the Cherokee Neutral Lands" in the State of Kansas, containing (800,000) eight hundred thousand acres, more or less, with the limitations and restrictions set forth in the seventeenth article of a treaty between the United States and the Cherokee Indians, ratified on the 11th day of August, A. D. 1866, as amended by the United States Senate, with all beneficial interests therein, at the rate of one dollar per acre, in lawful money of the United States, to be paid to the Secretary of the Interior in trust for said Indians as thereinafter set forth, viz:

Twenty-five thousand dollars on the execution of said contract; twenty-five thousand dollars on the approval of the survey of said lands by the Commissioner of the General Land Office, and twenty-five thousand dollars on the

30th day of August, 1867, seventy-five thousand dollars on the 30th day of August, 1868, seventy-five thousand dollars on the 30th day of August, 1869, and seventy-five thousand dollars on the 30th day of August, 1870, and one hundred thousand dollars per annum thereafter, until the whole should be paid, each of said several sums to draw interest at the rate of five per cent. per annum from the date of the approval of the survey as aforesaid, and the said American Emigrant Company agreed thereby to pay the said several sums of money and the interest thereon as aforesaid to the Secretary in Washington, as the same should become due, and the said interest on each and all the deferred payments to be paid annually on the first day of July; the United States agreeing also thereby to cause said lands to be surveyed as public lands are usually surveyed, in one year from the date of said agreement, and on the payment of fifty thousand dollars, to set apart for said company a quantity of said lands in one body, in as compact form as practicable, extending directly across the said lands from East to West, and containing a number of acres equal to the number of dollars thus paid, and from time to time to convey the same by patent to said company or its assignees, whenever afterwards requested so to do, in such quantities and by legal subdivisions as the said company shall indicate, and, on the payment of each additional instalment with interest as thereon stipulated, to set apart for said company an additional tract of land in compact form when the said company may request, but extending directly across the Neutral Lands from East to West, containing a number of acres equal to the number of dollars of principal thus paid, and to convey the same to the said company or its assigns as therein before described, and so on from time to time until the whole shall be paid, and no conveyance of any part of said lands to be made, until the same should have been paid for as provided in the said contract, though it was also provided thereby that the said company might make payments at an earlier period than those indicated, or pay the whole principal and interest, and receive titles of tracts of lands accordingly, if it should so elect, as by said contract on file in the Department of the Secretary of the Interior, will more fully appear.

And whereas afterwards the said contract was declared invalid, as not being in accordance with the terms of said

treaty, and subsequently, and on the 9th day of October, A. D. 1867, an agreement was made between Orville H. Browning, Secretary of the Interior, acting for and on behalf of the United States, and James F. Joy, whereby the said Secretary agreed to sell and did thereby sell to the said Joy all of the said tract of land, for the price of one dollar an acre cash, except such parcels thereof as were embraced in the tenor and effect of the two provisoes to the seventeenth section of said treaty, above alluded to, and whereas difficulties arose by reason of conflicting claims likely to result in delay, and whereas for the purpose of obviating the same, a supplemental article to said treaty was made and entered into between the United States by N. G. Taylor, Commissioner, and the Cherokee Nation of Indians, dated at Washington, the 27th day of April, 1868, and duly ratified by the Senate of the United States on Saturday, the 6th day of June, 1868, by which it was provided that an assignment might or should be made by the said American Emigrant Company of its said contract made with James Harlan, Secretary, above described, to the said James F. Joy, and that said contract as modified by the terms of said supplemental article should, with the assent of all parties be reaffirmed and declared valid, and that the said contract between the said O. H. Browning and the said James F. Joy should be relinquished and cancelled by the said Joy, and that the said assignment of the said first contract and the relinquishment of the second, should be and were thereby ratified and confirmed, whenever such assignment and relinquishment should be entered of record in the Department of the Interior, and when the said Joy should have accepted said assignment and should have entered into a contract with the Secretary of the Interior to assume and perform all the obligations of the said American Emigrant Company, under the said first named contract, as modified by the said supplemental article; which said modifications of said contract were as follows, viz:

First. That within ten days from the ratification of the said supplementary article, the sum of seventy-five thousand dollars should be paid to the Secretary of the Interior, as trustee for the Cherokee Nation of Indians.

Second. That the other deferred payments specified in said contact should be paid when they respectively fall due, with interest only from the date of the ratification thereof.

And it was further provided, that under the conveyance of the Cherokee Neutral Lands to the American Emigrant Company, with all beneficial interest therein, as set forth in said contract, the said company and its assigns should take only the residue of said lands, after securing to actual settlers the lands to which they were entitled under the provisions of the 17th article and the amendments thereto of the said Cherokee treaty of August 11, 1866, and that the proceeds of the sales of said lands so occupied at the date of the said treaty by actual settlers should enure to the sole benefit of and be retained by the Secretary of the Interior as trustee for the Cherokee Nation of Indians.

Now, therefore, this agreement, between Orville H. Browning, Secretary of the Interior, for and on behalf or the United States, and James F. Joy, for the purpose of carrying into effect the terms of said treaty, the assignment of the American Emigrant Company to James F. Joy, and the relinquishment by said Joy of his said contract with said Browning, having been duly made and entered of record as required by said supplemental article, witnesseth:

That the said James F. Joy agrees that he will pay or cause to be paid within ten days from the date of the ratification of said supplemental article the sum of seventy-five thousand dollars to the Secretary of the Interior, as trustee of the Cherokee nation of Indians; also that he will pay or cause to be paid to the said Secretary for like purpose all the other deferred payments at the times and in the manner specified in the said contract between the said James Harlan and the said American Emigrant Company as they shall respectively fall due with interest as therein agreed, to commence, however, only from the date of the ratification of said supplemental article, viz: June 6, 1868; and the said Joy further agrees that he will and hereby does accept said assignment, and will assume and does hereby assume, and will perform all the duties and obligations of the said American Emigrant Company under the said first above-mentioned contract, as modified by said supplemental article.

And the said O. H. Browning, Secretary as aforesaid, agrees that the United States shall and will do and perform all the duties and obligations resting upon them to do and perform according to the terms of the agreement in the said contract contained, and will carry out and execute all its provisions and stipulations, and cause patents of said lands

to be executed and delivered to said James F. Joy, or his assigns, in accordance with the terms and provisions thereof, except so far as the same have been modified by the stipulations of said supplemental article.

In witness whereof, the said parties have hereto set their signatures, this the eighth day of June, A. D. 1868, at Washington.

[SEAL.] O. H. BROWNING,
Secretary of the Interior.

[SEAL.] JAMES F. JOY.

[COPY.]

Hon. O. H. BROWNING, *Secretary of the Interior:*

In accordance with the supplemental article to a treaty concluded at Washington, by July 19, A. D. 1866; ratified with amendments July 27, A. D. 1866; amendments accepted July 31, 1866; and the whole proclaimed August 11, A. D. 1866, between the United States and Cherokee Nation of Indians, which supplemental article was ratified by the Senate of the United States, June 6, 1868, and to comply therewith:

This will certify that I do hereby relinquish the contract made by yourself, as Secretary of the Interior, with me, bearing date the ninth day of October, A. D. 1867, for the sale to me of the Cherokee Neutral Lands for one dollar per acre, cash, and all benefits and right thereunder secured to me by said contract, and hereby cancel the same.

In witness whereof I have hereto set my signature, this the 8th day of June, 1868, at Washington.

JAMES F. JOY.

No. 4.

Treaty between the United States of America and the Cherokee Nation of Indians, Supplemental to the Treaty of July 19, 1866.

Whereas the feuds and dissentions, which for many years divided the Cherokees, and retarded their progress and civilization, have ceased to exist, and there remains no longer any cause for maintaining the political divisions and distinctions contemplated by the treaty of 19th July, 1866;

And whereas the whole Cherokee people are now united in peace and friendship, and are earnestly desirous of preserving and perpetuating the harmony and unity prevailing among them;

And whereas many of the provisions of said treaty of July 19, 1866, are so obscure and ambiguous as to render their true intent and meaning on important points difficult to define, and impossible to execute, and may become a fruitful source of conflict, not only amongst the Cherokees themselves, but between the authorities of the United States and the Cherokee Nation and citizens;

And whereas important interests remain unsettled between the Government of the United States and the Cherokee nation and its citizens, which in justice to all concerned ought to be speedily adjusted;

Therefore, with a view to the preservation of that harmony, which now so happily subsists among the Cherokees, and to the adjustment of all unsettled business growing out of treaty stipulations between the Cherokee Nation and the Government of the United States; it is mutually agreed by the parties to this treaty, as follows, viz:

Article I.

All party distinctions heretofore existing in the Cherokee nation are hereby abolished, and shall forever cease; and such provisions of the treaty of July 19, 1866, between the Cherokee Nation and the United States as provided for any division or distinction among the Cherokee people, are hereby abrogated, and shall henceforth be considered null and void, as though they had never existed.

All Cherokees who, by the constitution of the Cherokee nation, are entitled to the right of Cherokee citizenship, and who may now be out of the nation, are invited and earnestly requested to come to their homes, where they may live in peace.

Laws shall be passed and enforced for equal protection, and for the security of life, liberty, and property; and full authority shall be given by law to all or any portion of the Cherokee people peacably to assemble and petition their own Government, or the Government of the United States, for the redress of grievances, and to discuss their rights.

No one shall be punished in time of peace for any crime

or misdemeanor, except upon conviction by a jury of his country, and the sentence of a court duly authorized by law to take cognizance of the offence.

Article II.

The boundaries of the Cherokee country shall forever continue and remain as follows:

Beginning at a mound of rocks four feet square at base, and four and a half feet high, from which another mound of rocks bears south one chain, and another mound of rocks bears west one chain, on what has been denominated the old western territorial line of Arkansas Territory, twenty-five miles north of Arkansas river; thence south twenty-one miles and twenty eight chains to a post on the northeast bank of the Verdigris river, from which a hackberry fifteen inches in diameter bears south sixty-one degrees thirty-one minutes east, forty-three links, marked C. H. L., and a cottonwood forty-two inches diameter bears south twenty-one degrees fifteen minutes east, fifty links, marked C. R. L.; thence down the Verdigris river on the northeast bank, with its meanders to the junction of Verdigris and Arkansas rivers; thence from the lower bank of Verdigris river, on the north bank of Arkansas river, south forty-four degrees thirteen minutes east, fifty-seven chains, to a post on the south bank of the Arkansas river opposite the eastern bank of Neosho or Grand river, at its junction with the Arkansas, from which a red oak thirty-six inches in diameter bears south seventy-five degrees forty-five minutes west, twenty-four links, and a hickory twenty-four inches in diameter bears south eighty-nine degrees east, four links; thence south fifty-three degrees west, one mile, to a post from which a rock bears north fifty-three degrees east, fifty links, and a rock bears south eighteen degrees eighteen minutes west, fifty links; thence south eighteen degrees eighteen minutes west, thirty-three miles twenty-eight chains and eighty links to a rock, from which another rock bears north eighteen degrees eighteen minutes east, fifty links, and another rock bears south fifty links; thence south four miles to a post on the lower bank of the north fork of Canadian river, at its junction with Canadian river, from which a cottonwood twenty-four inches in diameter bears north eighteen degrees east, forty links, and a cottonwood fifteen inches in diameter

bears south nine degrees east, fourteen links; thence down the Canadian river on its north bank to its junction with Arkansas river; thence down the main channel of Arkansas river to the western boundary of the State of Arkansas at the northern extremity of the eastern boundary of the lands of the Choctaws, on the south bank of Arkansas river, four chains and fifty-four links east of Fort Smith; thence north seven degrees twenty-five minutes west, with the western boundary of the State of Arkansas, seventy-six miles sixty-four chains and fifty links to the southwest corner of the State of Missouri; thence north, on the western boundary of the State of Missouri, eight miles forty-nine chains and fifty links, to the north bank of Cowskin or Seneca river, at a mound six feet square at base, and five feet high, in which is a post marked on the south side cor. x. ch. Ld.; thence west on the southern boundary of the lands of the Senecas eleven miles and forty-eight chains, to a post on the east bank of Neosho river, from which a maple eighteen inches in diameter bears south thirty-one degrees east, seventy-two links; thence up Neosho river, with its meanders, on the east bank, to the southern boundary of the State of Kansas; thence west on the thirty-seventh parallel of north latitude, to the northeast corner of New Mexico; thence south to the northwest corner of the State of Texas; thence east along the northern boundary of the State of Texas to the northeast corner of said State; thence south along the eastern line of said State to the northern line of the Creek lands; thence east along said line to the place of beginning:

Provided, however, that nothing herein contained shall be so construed as to deprive the Cherokees of any lands to which they are entitled by treaty stipulations embraced within the present boundaries of any of the States of the United States.

Article III.

The United States re-affirm all obligations arising out of treaty stipulations and legislative acts of the Government with regard to the Cherokee Nation and individuals thereof, and guarantee a compliance with all legal obligations of each of the States of the Union towards said Cherokee Nation and individuals thereof.

Article IV.

Sec. 1. The United States having, by article 2 of the treaty of October 18, 1865, with the Komanches and Kioways, set apart for the use and occupation of said Indians, and other friendly tribes, that portion of the Cherokee domain lying west of 98° west longitude, and south of 37° north latitude, and estimated to contain 9,500,000 acres; and the United States having further, by Article 16 of the treaty of July 19, 1866, with the Cherokees, set apart, in effect for the like purpose of settling friendly Indians thereon, all the remaining Cherokee domain west of 96° west longitude, and estimated to contain 3,500,000 acres; and the Government of the United States being desirous of extinguishing the Indian title to that strip of land belonging to the Cherokee Nation and included within the State of Kansas, which strip, estimated to contain 768,000 acres was, by the 17th article of the treaty of 19 July, 1866, ceded by said nation to the United States in trust, to be disposed of as the Cherekee Neutral Lands were to be disposed of, but which was not included in the contract by which the said Neutral Lands were sold by the Secretary of the Interior; and the Cherokees having received no compensation for any of the domain herein mentioned, and desiring to realize therefor a just and reasonable sum to enable them to alleviate their suffering condition and to raise themselves from the extreme poverty in which they were left by the late war, it is hereby stipulated and agreed that the United States shall pay to the Cherokee nation, for the domain herein-mentioned, west of 96° of west longitude, and south of 37° of north latitute, for the purpose of settling friendly Indians thereon, and for the "strip" in Kansas above-mentioned, containing altogether about 13,768,000 acres, the sum of three million five hundred thousand dollars: in further consideration of which sum the Cherokee nation hereby relinquishes to the United States all its right and interest in and to that portion of the Cherokee "outlet" embraced within the Pan-Handle of Texas, containing about 3,000,000 acres, and that portion within New Mexico and Colorado. *Provided*, however, that the Cherokees hereby reserve all salines on the lands referred to west of the Arkansas river, and south of the 37th parallel of north latitude, with right of ways to and from the same in all directions, together with the free use of all wood, coal, and other facilities requisite for the development of

said salines, and for the manufacture of salt therefrom, and also the right of exporting and disposing of said salt free from taxation.

SEC. 2. The sum of three million five hundred thousand dollars herein-mentioned, shall be applied as follows: After deducting therefrom such amounts as the Cherokee Council, or any duly authorized delegation thereof, shall ascertain and determine to be necessary for the payment of the just liabilities of the nation to be paid as provided by the 6th section of this article, one-sixth part shall be paid within six months after the ratification of this treaty; one-sixth part at the end of the fiscal year 1869, with interest at the rate of five per cent. per annum from the date of said ratification; and one-sixth part at the end of the fiscal year 1870, with interest at the rate of 5 per cent. per annum from the date of said ratification; which three payments, as they are respectively made by the United States, shall be distributed amongst the Cherokees as *per capita*, or head-right moneys, by some suitable agent, who shall be selected for that purpose by the Secretary of the Interior; and United States registered bonds, bearing 5 per cent. interest in coin, shall, immediately after the ratification of this treaty, be issued for the residue of said three million five hundred thousand dollars, to be held in trust by the Secretary of the Interior for the Cherokee Nation, and the interest arising thereon shall be paid semi-annually and applied as follows:

Thirty-five per cent. for the support of the common schools of the nation and for educational purposes, fifteen per cent. for the Orphan fund, and fifty per cent. for general purposes, including reasonable salaries of district officers.

SEC. 3. To enable the agent mentioned in the preceding section of this article to divide and pay out the *per capita* moneys herein provided for, the Secretary of the Interior shall, as soon as practicable after the ratification of this treaty, have a census taken of the Cherokees in the Cherokee nation, or who shall remove to said nation and settle there prior to the making of the payments herein provided for, and cause their names to be entered upon a roll, and payments shall be made only to persons whose names shall appear on said roll, or to their legal representatives.

SEC. 4. The lands mentioned in section first of this article, not included within the limits of any organized State or Territory of the United States, shall be occupied by Indians

only. *Provided,* that no Cherokee shall settle on any of said lands, if assigned to other Indians, without first obtaining the consent of said Indians. *Provided, also,* that the price of any of said lands which any Cherokee may purchase, shall be ascertained by the appraisement of said lands at its relative value; and that such Cherokees as have made improvements on said lands, shall have the right to remain thereon, or shall be paid the value of such improvement, as he or she may elect.

Sec. 5. It is further stipulated and agreed that no Indians other than Cherokees, shall be permitted to settle in the Cherokee country east of 96° west longitude from Greenwich, unless first admitted to citizenship by the Cherokee National Council.

Sec. 6. So much of the moneys arising under the 2d section of this article, or under any other article of this treaty, as the National Council, or a duly authorized delegation thereof, shall ascertain and determine to be necessary for the payment of the just liabilities of the nation, shall, on their requisition, be paid over to them by the United States.

Article V.

Whereas, by the seventeenth article of the treaty of July 19, 1866, the Cherokee "Neutral Lands" in the State of Kansas were ceded in trust to the United States to be disposed of by them for the benefit of the Cherokee nation as provided for in said treaty; and whereas, the said "Neutral lands" have been disposed of by the Secretary of the Interior, with the exception of such parts thereof as are embraced in the tenor and effect of the two provisions to the 17th article of said treaty; and, whereas, the proceeds to arise from the sale of the lands embraced in the tenor and effect of the said two provisoes to the 17th article will, it is believed, be largely in excess of the sum of $500,000, (paid by the Cherokees to the United States for the said lands,) with interest at the rate of 5 per cent. per annum from date of purchase by the Cherokees to the date of the signing of this treaty.

Therefore, to enable the Cherokee Nation to raise funds at once to strengthen its government and rebuild and extend its school and orphan systems, the United States hereby stipulate and agree that they will refund to the Cherokee nation the original sum of $500,000, paid to them by said

nation for the said "Neutral Lands" under the provisions of the treaty of 1836, with interest at the rate of 5 per cent per annum from the date of said treaty to the date of signing the present treaty, with the understanding and agreement that the Government of the United States, instead of the Cherokee Nation, shall, for their own use and benefit, receive all moneys that may accrue from any sale or sales made or to be made of all or any portion of the said "Neutral Lands," as provided for in the said seventeenth article of the treaty of 1866 amendment thereto, the money so refunded to the Cherokee Nation by the United States shall except so much as may be necessary to discharge national obligations as provided for in the fourteenth article of this treaty be invested in United States registered stocks at their current value, and the interest on all such funds shall be paid semi-annnually, on the order of the Cherokee Nation, and shall be applied as follows: Thirty-five per cent for the support of the common schools of the Nation and educational purposes, fifteen per cent for the orphan fund, and fifty per cent for general purposes, including reasonable salaries of district officers.

Article VI.

The contracting parties hereby stipulate and agree that the Secretary of the Interior shall ascertain, at his earliest convenience and as accurately as practicable, the number of acres of land reserved and owned by the Cherokee nation in the State of Arkansas and in the States east of the Mississippi river; and it is hereby stipulated and agreed that after ascertaining such number of acres the Government of the United States will pay therefor the appraised val ue of such lands, the appraisement to be made by three competent persons, one of whom shall be selected by the Cherokee Nation and two by the Secretary of the Interior.

It is further stipulated and agreed that any Cherokee may purchase at their appraised value any or all of said lands, and a patent therefor shall be issued by the United States.

The proceeds arising from the sale of lands embraced in the tenor of this article shall be invested in United States registered stocks at their current value, and the interest thereon shall be paid semi-annually, on the order of the Cherokee Nation, and to be applied to educational purposes.

Article VII.

The Government of the United States being in arrears to the Cherokee Nation for several years of its annuity fund, accruing during the late war and remaining unpaid, it is agreed that the Government will pay to the Nation the amount of said arrears, whatever the same shall be, and when received it shall be applied in accordance with treaty stipulations.

Article VIII.

Whereas there have been conflicts of jurisdiction between the United States District for the Western District of Arkansas and the tribunals of the Cherokee Nation, in relation to offences alleged to have been committed between citizens of the nation; therefore, in order to avoid any cause of future disagreement upon this subject, it is stipulated and agreed: That all citizens of the United States who shall become citizens of the Cherokee Nation, whether by intermarriage or by act of the Cherokee Legislature, shall, to all intents and purposes, be considered as native-born Cherokees, so far as regards legal jurisdiction over them; and it shall not be lawful for such persons to be held to answer before any court of the United States any further than if they were native-born Cherokees.

It is further explicitly agreed and understood between the contracting parties that all Cherokees shall be held to answer only before the courts of the Cherokee Nation for any crime, misdemeanor, or other offence whatever committed between themselves within the limits of the Cherokee Nation; and any Cherokee, whether by nativity, inter-marriage, or act of Cherokee Legislature, who may commit any crime, misdemeanor, or other offence whatever in any State or Territory of the Union, shall be held to answer before the United States Courts in such State or Territory only as citizens of the United States are held to answer.

Nor shall any Cherokee, while in any State or Territory of the Union, be subject to any further restraints of life, liberty, or property by the laws of the United States than any citizen of the United States would be in like circumstances, but shall be entitled to all privileges and immunities of citizens in such State or Territory.

It is further explicitly understood and agreed that no act,

of any nature whatever, committed in any State or Territory of the United States by parties, one or more of whom may be Cherokees, shall be considered a crime, misdemeanor, or offence, and punished as such, unless the same act, if committed by parties all of whom are citizens of said State or Territory, and not Indians, would be considered a crime, misdemeanor, or offence, and be punished as such.

Article IX.

Whereas, by article 3 of the treaty of 1835 between the Cherokees and the United States, it was stipulated as follows:

"It is, however, agreed that the military reservation at "Fort Gibson shall be held by the United States. But "should the United States abandon said post and have no "further use for the same, it shall revert to the Cherokee "Nation. The United States shall always have the right to "make and establish such post and military roads and forts "in any part of the Cherokee country as they may deem "proper for the interest and protection of the same, and the "free use of as much land, timber, fuel, and materials of all "kinds for the construction and support of the same as may "be necessary; provided that if the private rights of indi- "viduals are interfered with, a just compensation therefor "shall be made."

And whereas, the said post at Fort Gibson was subsequently abandoned by the United States, and, by the terms of the treaty, reverted to the Cherokee Nation, and was taken possession of by it, and laid off into town lots and sold to citizens of the Cherokee Nation;

And wherees, the said post at Fort Gibson has since been re-occupied and enlarged with its reservation of land, so as to embrace a portion of the lots so laid off and sold;

And whereas, other private rights covered by that treaty have been interfered with by the establishment of post and military roads and forts, and no renumeration made for damage, and loss resulting from such interference;

Therefore, it is hereby made the duty of the agent for the Cherokee Nation to investigate all such claims as may be brought to his notice by any Cherokee citizen; and if, upon investigation, the agent shall find that any property belonging to a Cherokee citizen shall have been taken, used or de-

stroyed by the military authorities of the United States, or that any such property is still in their possession, he shall report the facts, with the value of such property, to the Secretary of the Interior; and if it be ascertained that no compensation has ever been made therefor, the value of the property taken, used, or destroyed shall be paid by the United States to the owner thereof, and the value of the property held by the United States shall be paid to the owner thereof, with reasonable damages for its detention, or the property itself restored and reasonable damages for detention paid within six months from the date of the report of said agent.

Article X.

A superintendent of Indian affairs for the district embracing the Indian country south of Kansas, west of Arkansas, north of Texas, and east of New Mexico, and an agent of the United States for the Cherokee nation and an interpreter shall continue to be appointed, and whenever a vacancy shall occur in any of said offices the authorities of the Cherokee Nation may make known to the proper authorities of the United States their wishes in regard to the filling of such vacancy, and their representations shall be entitled to and shall receive respectful consideration.

It is hereby declared and understood that no Cherokee, nor the property and effects of any Cherokee wherever found outside of the limits of the Cherokee Nation, shall be considered, as under the charge or control of said agent, or under the charge or control of said superintendent of Indian Affairs.

Article XI.

Whereas, by article 31, of the treaty of 1866, it was declared that nothing contained in said treaty, shall be construed, "as a relinquishment by the Cherokee Nation of any "claims or demands under the guaranties of former treaties," except as expressly provided in said treaty.

And whereas, it is the earnest desire of the contracting parties, that all just claims or demands, which the Cherokee Nation, or individual Cherekees, may have against the United States, whether arising out of said treaty stipulations or out of legislative acts of the United States, affecting said nation, or arising in any other manner so as to entail a moral, just, or a loyal obligation upon the United States, to

pay such claims or demands, shall be investigated and settled, therefore, immediately after the ratification of this treaty. There shall be appointed a Board of Commissioners, consisting of three competent persons—two to be appointed by the Secretary of the Interior, and one, who shall be a Cherokee, to be appointed by the Cherokee delegation signing this treaty—whose duty it shall be to examine and adjudicate all claims and demands within the purview of this article that may be presented to it on behalf of the Cherokee Nation, or any Cherokee individuals.

Where such claims are based on treaty stipulations, the said board shall refer to and be governed by the terms of the treaties out of which such claims are alleged to have arisen; they shall make an exhibit of all amounts originally due under such treaties, and the amounts, if any, that have subsequently been properly paid by the United States, towards extinguishing such claims.

If it shall appear, that any such amounts have been so paid, they shall be deducted from the original claims, and the remainder shall constitute a valid claim against the United States.

The said board shall also examine and determine whether any amounts have been paid by the United States, and improperly charged against the claims of the Cherokee Nation, or any individual Cherokees, and if it be found that any amounts have been so paid and improperly charged they shall be refunded by the United States.

The decisions of said board upon all claims embraced in this article shall be reported to the Secretary of the Interior, who shall investigate the same and report them, with his approval or disapproval thereof to the Senate of the United States for its action thereon, whose award shall be final and conclusive as to all parties concurred.

And said board shall further investigate any and all claims which the Cherokee Nation or individuals thereof may present before it, against any State or States of the Union, and report the result of such investigation to the Secretary of the Interior, who shall transmit the same with his approval or disapproval thereof to the Congress of the United States for such action as it may deem proper in the premises.

SEC. 2. The Commissioners provided for in this article shall hold their sessions at the City of Washington or at

such other places as circumstances may call for, and shall each receive for his services the sum of eight dollars per day; and they shall be allowed a clerk, to be appointed by them, who shall be paid the like sum of eight dollars per day while in actual service. The per diem of Commissioners and clerk shall be borne by the United States.

Article XII.

Whereas, by article 22 of the treaty of 1866, it was stipulated that the Cherokee National Council, or any duly appointed delegation thereof, shall have the privilege of appointing an agent to examine the accounts of the nation with the Government of the United States; and whereas it is deemed necessary and expedient that the powers of said agent shall be enlarged;

Therefore, it is stipulated and agreed, that the said agent shall examine not only the accounts of the nation with the Government of the United States but the accounts of individual Cherokees with said Government, and if he shall discover in said accounts any error to the prejudice of the Cherokee Nation or any of its citizens, or shall take exceptions thereto, he may present a statement of such error or exceptions to the board provided for in the preceding article. Said board shall, therefore, proceed to examine the items in regard to which error may be alleged or exceptions thereto taken, and if they shall find the allegation of error to be true or the exceptions well taken, they shall render their decision to that effect, and state the amounts found to be justly due and unpaid.

The decisions of said board upon all claims embraced in this article shall be reported to the Secretary of the Interior, who shall investigate the same, and report them, with his approval or disapproval thereof to the Senate of the United States for its action thereon, whose award shall be final and conclusive as to all parties concerned.

Article XIII.

It shall also be the duty of the board, provided for by article 11 of this treaty, to receive, examine, and decide upon all claims that may be presented to it by Cherokee citizens from quartermaster stores, and commissary supplies, or other property furnished by them to the armies of the United

States, or taken by the military authorities for the use of said armies during the late war; also all claims for property lost or destroyed by the operations of the late war on account of failure by the United States Government to protect the Cherokees according to its treaty stipulations.

If the board shall find that any property was so furnished, taken, lost, or destroyed, they shall decide the value of the same, and their decision shall be reported to the Secretary of the Interior, who shall investigate the same, and report them, with his approval or disapproval thereof to the Senate of the United States for its action thereon, whose award shall be final and conclusive as to all parties concerned.

Article XIV.

Full faith and credit shall be given by the United States to the public acts, boards, and judicial proceedings of the Cherokee Nation, and such acts, records, and proceedings shall be authenticated according to the laws of said nation, and have the same effect as they have in said nation.

Article XV.

It is hereby agreed and stipulated that if the Cherokees, or any of them East of the Mississippi, and elsewhere, shall within three years from the ratification of this treaty, remove to, and permanently settle, within the limits of the Cherokee Nation, such Indians shall thenceforth have all the rights, privileges, and immunities of other citizens of the Cherokee nation, and be upon a footing of perfect equality in every respect with other citizens.

Provided, that nothing in this treaty shall be so construed as to abrogate, or impair any right or rights now possessed or claimed by said Cherokees or any of them, under former treaties; and,

Provided, further that nothing herein shall be construed as an acknowledgement of any right or the validity of any claim of said Cherokee against the Cherokee Nation.

But if said Cherokees or any of them shall refuse or fail to avail themselves of the benefits of this article, they shall be thenceforth debarred from obtaining citizenship in the Cherokee Nation, except by act or acts of the National Council thereof.

Article XVI.

Every Cherokee citizen shall have the right to sell any products of his farm, including his live stock, or any merchandise, or manufactured products, and to ship or drive the same to market without restraint, or paying any tax thereon to the United States, or any one of them, and no license to trade in goods, wares, or merchandise, shall be granted by the United States, to trade in the Cherokee Nation, unless approved by the Cherokee National Council.

Article XVII.

The sum of $50,000 is hereby stipulated and agreed to be paid, one-half by the United States and one-half by the Cherokee nation to defray the expenses of the Cherokee delegations, whilst engaged in the negotiation of this treaty.

Article XVIII.

Whereas, by the 3d article of the treaty of 1866, between the Cherokee Nation and the United States, it was agreed that all confiscated farms and improvements on real estate belonging to the Cherokee citizens should be restored to the former owners of such property, their heirs, or assigns; and whereas, many of the owners of such property were not living at the date of the treaty,

Therefore, in order to preserve, protect, and hold such property until the heirs and assigns of such owners may be ascertained, and thus prevent litigation, it is hereby agreed and understood that the administrator or administratrix, executor or executrix of any deceased owner of any confiscated property aforesaid, shall have the same right to take possession thereof as the owner would have were he living.

Article XIX.

Whereas, by article 7 of the treaty of 1846, between the United States and the Cherokee Nation, provision was made for the payment, by the Cherokee Nation, of the value of all salines, which were the private property of individuals of the Western Cherokees, and of which they were dispossessed; and whereas, Bluford West, a Western Cherokee, was dispossessed of a saline, in the Cherokee Nation, known as the "West Saline," and the same with other sa-

lines, was declared, by an act of the National Council' dated November 2d, 1841, to be national property; and whereas, the Cherokee Nation has heretofore failed to pay for said saline, as provided in the said 7th article of the treaty of 1846,

Therefore, it is stipulated and agreed that the sum of twenty-four thousand dollars, or so much thereof as may be necessary, be paid by the Cherokee nation to Nancy Marcum, sole heiress of Bluford West, deceased, or to her duly authorized agent, in full satisfaction of all claims for valuation of said saline, improvements thereon, and appurtances thereto belonging, and for all damages for the deprivation of the use and benefit of the said saline, form the date of said act of the National Council, to the present time, and the said sum of twenty-four thousand dollars shall be considered a part of the liabilities of the Cherokee Nation provided for in section six of the 4th article of this treaty.

Article XX.

Whereas, by article 1 of this treaty, it is declared that all party distinctions heretofore existing in the Cherokee Nation, are abolished, and shall forever cease. Therefore, it is hereby stipulated and agreed that the courts of the Cherokee Nation shall have exclusive and original jurisdiction of all causes, civil and criminal, arising between citizens of the Cherokee Nation, within the limits of said nation, and that so much of the 7th article of this treaty of 1866, as vests such jurisdictions in courts of the United States, is hereby abrogated.

Article XXI.

And the United States hereby guarantee that all the lands embraced within the limits of the Cherokee Nation, as defined in article 2d of this treaty, and not otherwise disposed of, shall be forever secured to the Cherokee people in *fee simple*, for their common use and benefit until such time as their National Council shall determine to have the same surveyed, and allotted in severalty, share and share alike of each and every citizen of the Cherokee Nation; and whenever the Cherokee National Council shall so request, the Government of the United States, shall, at its own expense, cause the said lands to be surveyed as the public lands are sur-

veyed and allotted as aforesaid, and a patent shall be issued to each and every citizen of the Cherokee Nation for the distribution thereof, and to which he or she may be entitled. And so far as may be compatible with the Constitution of United States and the laws made in pursuance thereof for the regulation of trade and intercourse with the Indian tribes, the Cherokees shall be secured in the unrestricted rights of self-government, and free jurisdiction over persons and property within their limits, *excepting, however*, all persons with their property who are not by birth, adoption, or otherwise members of the Cherokee Nation or tribes; and the United States do hereby pledge themselves to protect the Cherokees from domestic strife against hostile invasions and against aggression by other Indians and white persons, not subject to their jurisdiction and laws; and for all injustice resulting from such invasion or aggression, full indemnity is hereby guaranteed to the Cherokee Nation, or to the party or parties injured, out of the money of the United States, upon the principle and according to the rules and regulations under which white persons are entitled to indemnity for injuries to or aggressions upon them committed by Indians.

No. 5.

Letters Patent to Cherokee Domain.

THE UNITED STATES OF AMERICA.

To all whom these presents shall come, greeting:

Whereas by certain treaties made by the United States of America with the Cherokee Nation of Indians of the 6th of May, one thousand eight hundred and twenty eight, the 14th of February, one thousand eight hundred and thirty-three, and the 29th of December, one thousand eight hundred and thirty-five, it was stipulated and agreed, on the part of the United States, that in consideration of the promises mentioned in the said treaties, respectively, the United States should guarantee, secure, and convey, by patent to the said Cherokee Nation, certain tracts of land; the descriptions of which tracts and, the terms and conditions on which they were to be conveyed and set forth in the second and third articles of the treaty of the 29th of December, one thousand eight hundred and thirty-five, in the

words following, that is to say: "Article 2d—Whereas, by "the treaty of May 6th, one thousend eight hundred and "twenty-eight, and the supplementary treaty thereto of Feb- "ruary 14th, one thousand eight hundred and thirty-three, "with the Cherokees west of the Mississippi, the United "States guarantied and secured to be conveyed by patent to "the Cherokee Nation of Indians, the following tract of "country: beginning at a point on the old western territo- "rial line of Arkansas Territory, being twenty-five miles "north from the point where the territorial line crosses "the Arkansas river; thence running from said north point "south on the said territorial line where the said territorial "line crosses Verdigris river; thence down said Verdigris "river to the Arkansas, thence down said Arkansas to a "point where a stone is placed opposite the east or lower "banks of Grand river at its junction with the Arkansas; "thence running south forty-four degrees west one mile; "thence in a straight line to a point four miles northerly "from the mouth of the north fork of the Canadian; thence "along the said four mile line to the Canadian; thence down "the Canadian to the Arkansas; thence down the Arkan- "sas to a point on the Arkansas where the eastern Choctaw "boundary strikes said river and running thence with the "western line of Arkansas Territory as now defined, to the "southwest corner of Missouri; thence along the western "Missouri line to the land assigned the Senecas; thence "on the south line of the Senecas to the Grand river; thence "up said Grand river as far as the south line of the Osage "reservation extended if necessary; thence up and between "said south Osage line, extended west if necessary, and a "line drawn due west from the point of beginning to a cer- "tain distance west, at which a line running north and south "from said Osage line to said due west line, will make seven "millions of acres within the whole described bonndaries. "In addition to the seven millions of acres of land thus pro- "vided for and bounded, the United States further guaran- "tee to the Cherokee Nation a perpetual outlet west, and a "free and unmolested use of all the country west of the "western boundary of said seven millions of acres, as far "west as the sovereignty of the United States and their "right of soil extend. *Provided*, however, that if the saline "or salt plain on the western prairie shall fall within said "limits prescribed for said outlet, the right is reserved to

"the United States to permit other tribes of red men to get "salt on said plain, in common with the Cherokees, and let- "ters patent shall be issued by the United States as soon as "practicable for the land hereby guarantied. And whereas "it is apprehended by the Cherokees that in the above ces- "sion there is not contained a sufficient quantity of land for "the accommodation of the whole nation on their removal "west of the Mississippi, the United States, in consideration "of the sum of five hundred thousand dollars, therefore "hereby covenant and agree to convey to the said Indians "and their descendants, by patents in fee simple, the follow- "ing additional tract of land situated between the west line "of the State of Missouri and the Osage reservation, be- "ginning at the southeast corner of the same, and runs "north along the east line of the Osage lands fifty miles "to the northeast corner thereof; and thence east to the "west line of the State of Missouri; thence with said line "south fifty miles; thence west to the place of beginning; "estimated to contain eight hundred thousand acres of land; "but it is expressly understood that if any of the lands as- "signed the Quapaws shall fall within the aforesaid bounds, "the same shall be reserved and excepted out of the lands "above granted, and a pro rata reduction shall be made in "the price to be allowed to the United States for the same "by the Cherokees. Article 3d—The United States also "agree that the lands above ceded by the treaty of February "14th, one thousand eight hundred and thirty-three, in- "cluding the outlet, and those ceded by this treaty, "shall all be included in one, executed to the Chero- "kee Nation of Indians by the President of the United States, "according to the provisions of the act of May 28, one "thousand eight hundred and thirty. It is, however, agreed "that the military reservation at Fort Gibson shall be held "by the United States. But should the United, abandon "said post, and have no further use for the same, it shall "revert to the Cherokee Nation. The United States shall "always have the right to make and establish such post and "military roads and posts in any part of the Cherokee coun- "try as they may deem proper for the interest and protec- "tion of the same, and the free use of as much land, timber, "fuel, and materials of all kinds for the construction and "support of the same as may be necessary; provided, that "if the private rights of individuals are interfered with, a "just compensation therefor shall be made."

And whereas the United States have caused the said tract of seven millions of acres, together with the said perpetual outlet, to be surveyed in one tract, the boundaries whereof are as follows:

Beginning at a mound of rocks four feet square at base, and four and a half feet high, from which another mound of rocks bears south one chain, and another mound of rocks bears west one chain, on what has been denominated the old western territorial line of Arkansas Territory, twenty-five miles north of Arkansas river; thence south twenty-one miles and twenty eight chains to a post on the north-east bank of the Verdigris river, from which a hackberry fifteen inches in diameter bears south sixty-one degrees thirty-one minutes east, forty-three links, marked C. H. L., and a cottonwood forty-two inches diameter bears south twenty-one degrees fifteen minutes east, fifty links, marked C. R. K. L.; thence down the Verdigris river on the northeast bank, with its meanders to the junction of Verdigris and Arkansas rivers; thence from the lower bank of Verdigris river, on the north bank of Arkansas river, south forty-four degrees thirteen minutes east, fifty-seven chains, to a post on the south bank of the Arkansas river opposite the eastern bank of Neosho or Grand river, at its junction with the Arkansas, from which a red oak thirty-six inches diameter bears south seventy-five degrees forty-five minutes west, twenty four links, and a hickory twenty-four inches diameter bears south eighty-nine degrees east, four links; thence south fifty-three degrees west, one mile, to a post from which a rock bears north fifty-three degrees east, fifty links, and a rock bears south eighteen degrees eighteen minutes west, fifty links; thence south eighteen degrees eighteen minutes west, thirty-three miles twenty-eight chains and eighty links to a rock, from which another rock bears north eighteen degrees eighteen minutes east, fifty links, and another rock bears south fifty links; thence south four miles to a post on the lower bank of the north fork of Canadian river, at its junction with Canadian river, from which a cottonwood twenty-four inches diameter bears north eighteen degrees east, forty links, and a cottonwood fifteen inches diameter bears south nine degrees east, fourteen links; thence down the Canadian river on its north bank to its junction with Arkansas river; thence down the main channel of Arkansas river to the western boundary of the State of Arkansas,

at the northern extremity of the eastern boundary of the lands of the Choctaws, on the south bank of Arkansas river, four chains and fifty-four links east of Fort Smith; thence north seven degrees twenty-five minutes west, with the western boundary of the State of Arkansas, seventy-six miles sixty-four chains and fifty links to the southwest corner of the State of Missouri; thence north, on the western boundary of the State of Missouri, eight miles forty-nine chains and fifty links, to the north bank of Cowskin or Seneca river, at a mound six feet square at base, and five feet high, in which is a post marked on the south side cor. N. ch. Ld.; thence west on the southern boundary of the lands of the Senecas eleven miles and forty eight chains, to a post on the east bank of Neosho river, from which a maple eighteen inches in diameter bears south thirty-one degrees east, seventy-two links; thence up Neosho river, with its meanders, on the east bank, to the southern boundary of the Osage lands, thirty-six chains and fifty links west of the southeast corner of the lands of the Osages, witnessed by a mound of rocks on the west bank of Neosho river; thence west on the southern boundary of the Osage lands to the line dividing the territory of the United States from that of Mexico, two hundred and eighty-eight miles, thirteen chains and sixty-six links, to a mound of earth six feet square at base, and five and a half feet high, in which is deposited a cylinder of charcoal twelve inches long, four inches diameter; thence south along the line of the territory of the United States and of Mexico, sixty miles and twelve chains, to a mound of earth six feet square at base, and five and a half feet high, in which is deposited a cylinder of charcoal eighteen inches long and three inches diameter; thence east along the northern boundary of the Creek lands, two hundred and seventy-three miles, fifty-five chains and sixty-six links to the beginning; containing within the survey thirteen millions five hundred and seventy-four thousand one hundred and thirty-five acres, and fourteen-hundredths of an acre.

And whereas the United States have also caused the said tract of eight hundred thousand acres to be surveyed, and have ascertained the boundaries thereof to be as follows:

Beginning at southeast corner of Osage lands, described by a rock from which a red-oak, twenty inches diameter,

bears south twenty-seven degrees east, seventy-six links, and a burr-oak, thirty inches diameter, bears south fifty-nine degrees west, one chain; and another burr-oak, thirty inches diameter, bears north eight degrees west, one chain and thirty-seven links; and another burr-oak, forty inches diameter, bears north thirty degrees west, one chain and eighty-one links, and running east twenty-five miles, to a rock on the western line of the State of Missouri, from which a post-oak, ten inches diameter, bears north forty-eight degrees thirty minutes east, four chains; and a post-oak, twelve inches diameter, bears south sixty-two dgrees east, five chains; thence north with the western boundary of the State of Missouri, fifty miles, to a mound of earth five feet square at base, and four and a half feet high; thence west twenty-five miles to the northeast corner of the lands of the Osages, described by a mound of earth six feet square at the base, and five feet high; thence south along the eastern boundary of the Osage lands, fifty miles to the beginning; containing eight hundred thousand acres.

Therefore, in execution of the agreements and stipulation contained in the said several treaties, the United States have given and granted, and by these presents do give and grant unto the said Cherokee nation, the two tracts of land so surveyed, and hereinbefore described, containing in the whole fourteen millions three hundred and seventy-four thousand one hundred and thirty-five acres and fourteen hundredths of an acre; to have and to hold the same, together with all the rights, privileges and appurtenances thereunto belonging to the said Cherokee Nation forever, subject, however, to the right of the United States to permit other tribes of red men to get salt on the salt plain on the western prairie, referred in the second article of the treaty of the twenty-ninth of December, one thousand eight hundred and thirty-five; which salt plain has been ascertained to be within the limits prescribed for the outlet agreed to be granted by said article, and subject, also, to all the other rights reserved to the United States, in and by the articles hereinbefore recited, to the extent and in the manner in which the said rights are so reserved, and subject also to the condition provided by the act of Congress of the twenty eighth of May, one thousand eight hundred and thirty, referred to in the above recited third article, and which condition is that the lands hereby granted shall revert to the United States if

the said Cherokee Nation becomes extinct or abandons the same.

In testimony whereof I, Martin Van Buren, President of the United States of America, have cased these letters to be made patent, and the seal of the General Land Office to be hereunto affixed.

Given under my hand, at the City of Washington, the thirty-first day of December, in the year of our Lord one thousand eight hundred and thirty-eight, and of the independence of the United States the sixty-third.

[s. s.] M. VAN BUREN.

By the President:

H. M. GARLAND,
Recorder of the General Land Office.

GENERAL LAND OFFICE.

I, James M. Edmunds, Commissioner of the General Land Office, do hereby certify that the aunexed copy of a patent from the United States to the Cherokee Nation of Indians is a true and literal exemplification of said patent as recorded in vol. 9, pages 34, 35, 36, 37, 38, 39, 40, and 41, in Record of Donation Patents.

In testimony whereof I have hereunto subscribed my name, and caused the seal of this office to be affixed, at the City of Washington, on the day and year above written.

[SEAL.] J. M. EDMUNDS,
Commissioner of the General Land Office.

No. 6.

WASHINGTON, D. C., *June 20th*, 1868.

Hon. N. G. TAYLOR, *Commissioner of Indian Affairs:*

SIR: It is claimed by the Cherokees that their western boundary is at least as far west as the 103d degree of longitude west from Greenwich, and they base their claim, in part, upon the 2d article of the treaty of 1828, the 1st article of the treaty of 1833, the 2d article of the treaty of 1835, and the 1st article of the treaty of 1846.

The treaty of 1828 guarantees to the Cherokees seven millions of acres of land, and then declares in the following words:

"In addition to the seven millions of acres thus provided 'for, and bounded, the United States further guarantee to 'the Cherokee Nation a perpetual outlet west and a free and 'unmolested use of all the country lying west of the west-'ern boundary of the above described limits, and as far west 'as the sovereignty of the United States, and their right of 'soil, extend."

This guaranty is reaffirmed, in similar language, by the treaties of 1833 and 1835; and the guaranty contained in that of 1835, is reaffirmed by the treaty of 1846.

The question is, What did the United States convey by this grant?

In the year 1800, Spain, by the treaty of St. Ildefonso, ceded to the French Republic "the colony or province of Louisiana, *with the same extent that it now has, in the hands of Spain, and had, while in the possession of France, and such as it ought to be, in conformity with* the treaties subsequently concluded between Spain and other states."

By the Paris treaty, of 1803, with the United States, France, after reciting the cession of Louisiana by Spain, as above quoted, declared that the French Republic "doth hereby cede to the said United States, in the name of the French Republic, forever, and in full sovereignty, the said territory, with all its rights and appurtenances, as fully, and in the same manner, as they have been acquired by the French Republic, in virtue of the above-mentioned treaty, concluded with his Catholic Majesty."

It will be perceived, from the language of these two treaties, that the extent of the ceded territory was left extremely vague, and perhaps purposely so, as it appears from the diplomatic correspondence of the period, that it was impolitic, if not impracticable, to define the boundaries.—(See Marbois' History of Louisiana, pp. 283, 287.)

It may, however, be confidently stated, that the United States have persistently contended that the western boundary of Louisiana was the Rio Grande, from its mouth to its source.

Such was clearly the opinion of Mr. Webster, who, while Secretary of State, in a letter of 8th July, 1842, to the U. S. Minister to Mexico, declared that the territory of Texas, which was a part of the province of Louisiana, extended westward to the Rio Grande. Such, too, was the opinion of President Polk, who, in his message to Congress, of Decem-

ber, 1846. declared that Texas embraced all the country between the Nueces and the Rio Grande; and that she always claimed the latter river as her western boundary. The same view was held by President Jefferson, during whose administration Messrs. Monroe and Pinckney were sent on a special mission to Madrid, charged, among other things, with the adjustment of boundary between the two countries. In a note to the Spanish Minister, under date of January 28th, 1805, they assert that the boundaries of Louisiana, as ceded by France to the United States, "are the river Perdido on the east, and the river Bravo on the west."

The earliest maps published, of which anything is known in this country, so far as we can ascertain, conclusively establish the Rio Grande as the western boundary of the province of Louisiana. In Darby's "Louisiana," a map is given which purports to be an exact copy of part of the Latin maps published by Homann, at Nuremberg, in 1687 and 1712. These maps begin the boundaries of Louisiana at the mouth of the Rio Grande, and ascend that river to the mouth of the Salado de Apaches, afterwards called the St Panl's, and now the Pecos; thence by a line nearly north until it reaches the 38th parallel of north latitude, near the 102d degree of longitude west from Greenwich. Mr. Darby also stated that he had procured a map published in London in 1719, which commences the boundaries of Louisiana at the Rio Grande, and ascends that river to the mouth of the Pecos, thence along that river to its source, near the 103d degree of longitude west from Greenwich.

Had the boundaries of the western country remained unchanged by political events up to 1828, in which year the "perpetual outlet" was guaranteed the Cherokees "as far west as the sovereignty of the United States and their rights of soil extended," the Cherokee Nation would, from the above showing, have a clear and indisputable right to the "free and unmolested use of all the country" as far as the 103d degree. It remains to be seen how far their claim is affected by the events that occurred prior to the guaranty to them of the "outlet" in question.

In 1819, by the Florida treaty, the United States ceded to Spain a portion of the province of Louisiana. This cession embraced a part of the "outlet" now claimed by the Cherokees.

The Florida treaty was, however, a *nudum pactum:* Its

provisions were never carried out; the grantee never was in a condition to take possession of the ceded territory. *Actual delivery*, which is indispensable to complete the title, never was made.

It is a principle of public law, says Chancellor Kent, "that the national character of the place agreed to be surrendered by treaty continues as it was under the character of the ceding country, until it be actually transferred. Full sovereignty cannot be held to have passed by the mere words of the treaty without actual delivery. To complete the right of property, the right to the thing, and the possession of the thing, must be united. This is a necessary principle in the law of property in all systems of jurisprudence; there must be both the *jus in rem* and the *jus in re*. * * This general law of property applies to the right of territory no less than to other rights. The practice of nations has been conformable to this principle, and the conventional law of nations is full of instances of this kind." * (Kent,s Commentaries, vol. 1, marginal, pp. 177, 178.)

It results then, from the application of this principle of law, that the present claim of the Cherokee Indians to an outlet as far west as the 103d degree of longitude, is in no wise affected by the Florida treaty, since the "sovereignty of the United States and their right of soil" over that extent of country, did not, under said treaty, pass into the hands of Spain.

Grant, however, that this view is incorrect, and it gives rise to one that seems to establish conclusively the Cherokee claim to the perpetual outlet in question. If, under the Florida treaty, Spain were possessed of any rights of sovereignty, Mexico, by her independence of Spain, succeeded to those rights, and actually did attempt to exercise arbitrary control over that part of Louisiana, known as Texas. The latter resisted Mexican usurpation, and in her turn achieved independence by the decisive victory of San Jacinto, of April 21, 1836. On the 1st of March, 1845, the territory of Texas was re-annexed to the United States, and thus the latter again came into possession of that portion of the outlet west of 100°, it, indeed, it ever had been a part of the territory claimed by Mexico, and which by Texan independence she was forced to relinquish; the United States, more than a year after she had come into possession of the country now claimed by the Cherokees, re-affirmed the grant to them, that is to say, by treaty of 17th August, 1846.

It may be contended that the latter treaty only re-affirms the outlet described in that of 1835, and does not say that it shall comprise the country as far west as the sovereignty of the United States extended in 1846. But the evident intention of the Government was, in all of its treaties, to give a free and unmolested use of an outlet to the Cherokees as far West as the sovereignty of the United States extended at the dates when the treaties granting the outlet were respectively made. This was done in clear and positive language by the treaties of 1828, 1833, and 1835; and doubtless would have been done *ipsisimis verbis*, by the treaty of 1846, had that treaty not grouped together three distinct parcels of land, and, without extended description, referred to the 3d article of the treaty of 1835 as a sufficient designation of the territory for which a patent should be granted.

The language of all the treaties in which the outlet is described in extent is: the "United States further guarantee to the Cherokee Nation a perpetual outlet west, and a free and unmolested use of all the country west of the western boundary of said seven millions of acres as far west as the sovereignty of the United States and their right of soil extend." And the treaty of 1846, in confirming this outlet, must of necessity have confirmed it according to its description in the treaty of 1835.

The Cherokees are not urging a recently discovered claim, but one that has for years been recognized by the Government, and hitherto undisputed.

The portion of the outlet in question has been specially excluded by legislative acts from the territories to which it was contiguous, and it appears upon all the standard maps of the United States as a part of the Cherokee country. By the act of Congress of 9th September, 1850, establishing the boundaries of Texas, the northern limits of that State is 36° 30′. By the act of the 30th May, 1854, the southern boundary of Kansas is fixed at the 37th degree, with a proviso in favor of the Cherokees; and by the act of 9th September, 1850, the eastern boundary of New Mexico is fixed at the 103d degree of west longitude, thus leaving unappropriated that portion of the outlet here claimed by the Cherokees, namely: from 36° 30′ to the 37th parallel of latitude, and from the 100th degree to the 103d degree of longitude.

We have not been able yet to find a report of Campbell's survey of the above boundaries, but as it ought to conform to the laws of Congress it is not seen how it could either

add to or detract from the merits of the present claims. Such being briefly some of the grounds on which the Cherokees base their claim, it is necessary to determine the *quantity* of interest they have in said outlet.

By the treaty of 1835, which is reaffirmed by that of 1846, the duration of the guaranty is to be "perpetual," and its extent a "*free and unmolested use*" of the outlet: "*Provided, however*, That if the saline or salt plain on the western prairie shall fall within said limits prescribed for said outlet, the right is reserved to the United States to permit other tribes of Red men to get salt on said plain in common with the Cherokees."

The interest thus conveyed comes but little short of a grant in *fee simple*, and its relinquishment to the United States would restore to the Government full sovereignty over the country included within the outlet.

Even in case the sovereignty of the United States did not extend as far as the 103d degree when this grant was made, does not the fact that the Government afterwards acquired sovereignty to that point give title to the Indians to the "outlet" that far? The western limit never was fixed until after the treaty of 1846 had conveyed this "outlet."

What was the intention in granting the outlet? Was it not to afford the Cherokees facility of exit into Mexico?

We have the honor to be very respectfully,

Your obedient servants,

LEWIS DOWNING,
Principal Chief Cherokee Nation.

H. D. REESE,
W. P. ADAIR,
J. P. DAVIS,
A. SCRAPER,
J. A. SCALES,
E. C. BOUDINOTT.
} *Cherokee Delegation.*

WASHINGTON, D. C., *June* 29, 1868.

To Col. LEWIS DOWNING, *Principal Chief*,
and H. D. REESE and others, *Cherokee Delegates:*

I have, at your request, read and carefully considered the foregoing opinion, which you handed me, in regard to the Western Cherokee boundary.

I concur generally in that opinion, with the exception, perhaps, of some of the arguments in favor of the nullity of the Florida treaty, so far as Texas was concerned.

By that treaty, Texas, which had been ceded to us by France as a part of Louisiana, in 1803, was transferred to Spain. When that treaty was under consideration, that eminent statesman, Henry Clay, introduced in the House of Representatives of Congress a resolution strongly censuring that treaty, and declaring that Texas, being a part of the territory of the United States, could not be ceded by the treaty-making power to a foreign country. This cession of Texas to Spain was not only an act unauthorized by the Constitution, but was void for another reason, viz: that this cession to Spain was in direct conflict with clear and positive stipulations made by us in the treaty with France as to the disposition of that whole territory.

At the present moment one-half of the area of the United States (including Alaska) consists of territorial possessions not yet organized as States. Now, is it possible that the treaty-making power can transfer all that immense region, together with all its people, to a foreign monarchy? I concur with Mr. Clay in opinion, that such a treaty would be unconstitutional and void. And this opinion I have often expressed in the Senate of the United States and elsewhere.

If, then, the Florida treaty, so far as the cession of Texas to Spain was concerned, was void, that territory was then ours, and even the most restricted interpretation of the several Cherokee treaties of 1828, '33, '35, and '46, would carry the western boundary of the Cherokee territory to the Rio Grande.

But again, Texas, with the Rio Grande as her western boundary, had been re-annexed to the United States prior to the 17th August, 1846, the date of the last named Cherokee treaty, with a very peculiar provision as to the territory north of 36° 30′, including the very area now in dispute, and consequently, at that date, Texas being within our territorial limits, the Western Cherokee boundary would be carried again to the Rio Grande. Furthermore, prior to the 17th August, 1846, General Kearney, acting under the direct authority of the President of the United States during our war with Mexico, had taken possession of New Mexico, and proclaimed it to be a part of the United States.

Now, by the doctrine of relation, after New Mexico became a part of our territory under the treaty with Mexico, of 1848, and by the rules of international law, our right to New Mexico would not commence to run from the date of the treaty of 1848, but would relate back, and cover our military occupation of New Mexico of 1846, by the retrospective energy of its provision. For this reason, also, the western Cherokee boundary would be carried at least to the Rio Grande.

R. J. WALKER.

P. S.—Under all the circumstances, however, I think it will be best for the Cherokee Nation, for a fair and reasonable consideration, to transfer the territory claimed to the United States. R. J. W.

No. 19.

Ex. Doc. 2d Sess. 29th Cong.

PROCLAMATION to the citizens of New Mexico, by Col. Kearny, commanding the United States forces.

The undersigned enters New Mexico with a large military force for the purpose of seeking union with and ameliorating the condition of its inhabitants. This he does under instructions from his Government, and with the assurance that he will be amply sustained in the accomplishment of this object. It is enjoined on the citizens of New Mexico to remain quietly at their homes, and to pursue their peaceful avocations. So long as they continue in such pursuits, they will not be interfered with by the American army, but will be respected and protected in their rights, both civil and religious.

All who take up arms or encourage resistance against the Government of the United States will be regarded as enemies, and will be treated accordingly.

S. W. KEARNEY,
Col. First Dragoons.

CAMP AT BENT'S FORT,
ON THE ARKANSAS, *July* 31, 1846.

No. 7.

Argument of the North Carolina Cherokees in favor of their demands against the Cherokee Nation.

STATEMENT OF THEIR CASE,

By the Delegation of the North Carolina Cherokees, to the Commissioner of Indian Affairs.

WASHINGTON, *June* 12, 1868.

HON. N. G. TAYLOR, *Commissioner of Indian Affairs:*

SIR: The delegation of Cherokee Indians of North Carolina, respectfully submit:

That the Cherokees of North Carolina claim that they are entitled, in proportion to their numbers, per capita, to an equal share in all the lands belonging to the Cherokee Nation west (or claimed to belong to them) and to a like share in all moneys derived from the sale of any portion of said lands, acquired by the treaty of 1835.

This claim is based upon and made under the 12th article of the treaty of 1835.

2d. The agreement in writing, entered into by and between themselves and the Western Cherokees by their respective delegates as to the right of the respective parties whilst the treaty was pending for ratification before the Senate of the United States, which agreement was filed in and is of record in your office.

3d. The 1st and 10th articles of the treaty of 1846.

4th. The opinion of Attorney General Mason of 19th September, 1846, and the opinion of Attorney General Crittenden, of the 16th of April, 1851.

5th. The decisions of the Secretary of War and Interior.

6th. The uniform practice of your bureau in the disbursement of appropriations made by Congress to fulfil the stipulations of the treaty of 1835.

By the published treaty of 1866 with the Cherokee Nation, we are advised that provisions are made for the sale to the Government, of all the lands of the Cherokee Nation lying west of 96° meridian of longitude, upon certain conditions; also the sale of the lands east of 96° to Indians of other tribes, and an unconditional sale to private parties of

the (800,000) eight hundred thousand acres of land lying within the present limits of the State of Kansas.

The Cherokees of North Carolina claim that all these lands are common property of the nation, belonging to all the Cherokee people, of whom they constitute a part, acquired and paid for out of the common fund of the old nation, as it existed in 1835, and to which they (the Cherokees of North Carolina) contributed their full share.

Waiving all questions of the moral or legal right of the Western Cherokees to sell or dispose of these lands without the knowledge and consent of the Eastern Cherokees, equal owners in the same pro rata, the North Carolina Cherokees respectfully submit, that they are entitled to participation, in proportion to their numbers, in all the benefits arising from the sales.

They are advised that a recent census of the Western Cherokees has been taken under the supervision of your bureau. The Cherokees of North Carolina respectfully ask that you cause a like enumeration of their number to be made as well as of all Eastern Cherokees, with a view to determine the distributive shares per capita, of every Cherokee entitled to participate in moneys arising from the sale of the common property of the tribe or nation.

We further respectfully ask, that when the distributive shares are ascertained and the moneys realized on the sales made, the amount to which the Cherokees of North Carolina may be found entitled, may be paid to them directly, by an officer appointed by and responsible to your office for a faithful discharge of the duties imposed.

Very respectfully, your obedient servants,

[Signed,] GEORGE W. BUSHYHEAD,
JOHN CONNUTTA, his ⋈ mark,
JAMES OBADIAH, his ⋈ mark,
JOHN WALKER, his ⋈ mark,
JAMES WALKINGSTICK, his ⋈ mark,
JOHN WAYNENA, his ⋈ mark.
Duly witnessed in Indian signatures.

Attest: JAMES TAYLOR, *Sec. of Delegation.*

Hon. N. G. Taylor,

Commissioner of Indian Affairs:

Sir: We desire to submit the following brief of the treaties, laws, and facts bearing upon the claims of the Cherokees of North Carolina to participate, in proportion to their number, in the lands, moneys, and annuities of the Cherokee Nation.

By the Treaties of 1817 and 1819.

All the lands acquired by the Cherokees west of the Mississippi were in exchange for lands ceded by the Cherokee Nation then east of the Mississippi. (See preamble and 1st and 2d articles of said treaty, 1817, Statutes at Large, vol. 7, page 156–7,) which we here quote:

Articles of a Treaty

Concluded at the Cherokee Agency, within the Cherokee Nation, between Major General Andrew Jackson, Joseph McMinn, Governor of the State of Tennessee, and General David Merriwether, Commissioner Plenipotentiary of the United States of America of the one part, and the chiefs, head men and warriors of the Cherokees on the Arkansas river, and their deputies, John D. Chrisholm and James Rogers, duly authorized by the chiefs of the Cherokees on the Arkansas river, in open council by written power of attorney, duly signed and executed in the presence of Joseph and William Ware.

Article I.

The chiefs, head men and Warriors of the whole Cherokee Nation cede to the United all the lands lying north and east of the following boundaries, viz: Beginning at the High Shoals of the Appalachy river, and running thence along the boundary line between the Creek and Cherokee Nations westerly to the Chatahouchy river; thence up the Chatahouchy river to the mouth of Souque creek; thence continuing with the general course of the river until it reaches the Indian boundary line, and should it strike the Turnuvar river, thence with its meanders down said river to its mouth, in part of the proportion of land in the Cherokee Nation east of the Mississippi, to which those now on the Arkansas and those about to remove there, are justly entitled.

ARTICLE II.

The chiefs, head men, and warriors of the whole Cherokee Nation do also cede to the United States all the lands lying north and west of the following boundary line, viz: Beginning at the Indian boundary line that runs from the north bank of the Tennessee river, opposite the mouth of the Hywassee river, at a point on the top of Walden's Ridge, where it divides the waters of the Tennessee river from those of the Sequatchie river; thence along the said ridge southwardly, to the bank of the Tennessee river at a point near to a place called the Negro Sugar Camp, opposite to the upper end of the first island above Running-Water town; thence westwardly a straight line to the mouth of Little Sequatchie river; thence up said river to its main fork; thence up its northernmost fork to its source; and thence due west to the Indian boundary line.

Also, the 5th article of same treaty, page 158:

ARTICLE V.

The United States bind themselves in exchange for the lands ceded in the first and second articles thereof, to give to that part of the Cherokee Nation on the Arkansas as much land on the said river and White river, as they have or may hereafter receive from the Cherokee Nation east of the Mississippi, acre for acre, as the just proportion due that part of the Nation on the Arkansas agreeably to their numbers; which is to commence on the north side of the Arkansas river at the mouth of Point Remove, or Budwell's Old Place; thence by a straight line northwardly, to strike the Chattanooga Mountain, or the hill first above Shield's Ferry on White river, running up between said river for compliment, the banks of which rivers to be the lines; and to have the above line from the point of beginning to the point on White river run and marked, which shall be done soon after the ratification of this treaty; and all citizens of the United States, except Mrs. P. Lovely, who is to remain where she lives during life, removed from within the bounds abovenamed.

And it is further stipulated that the treaties heretofore between the Cherokee Nation and the United States are to continue in full force with both parties of the Nation, and both parts thereof entitled to all the immunities and privi-

leges which the old Nation enjoyed under the aforesaid treaties, the United States reserving the right of establishing factories, military posts, and roads within the boundaries above defined.

See also preamble and 1st article treaty 1819, Statutes at Large, vol. 7, page 195–6.

Whereas, a greater part of the Cherokee Nation have expressed a desire to remain on this side of the Mississippi, and being desirous in order to commence those measures which they deem necessary to the civilization and preservation of their Nation, that the treaty between the United States, and signed on the 8th of July, eighteen hundred and seventeen might, without further delay, or the trouble or expense of taking the census, as stipulated in the said treaty, be finally adjusted, have offered to cede to the United States a tract of country at least as extensive as that which they probably are entitled to under its provisions, the contracting parties have agreed to and concluded the following articles:

Article I.

The Cherokee Nation cedes to the United States all their lands lying north and east of the following line, viz: Beginning on the Tennessee river, at the point where the Cherokee boundary with Madison county, in the Alabama territory, joins the same; thence along the main channel of said river to the mouth of the Highwassee; thence along the main channel to the first hill which closes in on said river, about two miles above Highwassee Old Town; thence along the ridge which divides the waters of the Highwassee and Little Jellico, to the Tennessee river at Tallassee; thence along the main channel to the junction of the Cower and Nantagale; thence along the Blue Ridge to the Unicon Turnpike road: thence by a straight line to the nearest main source of the Chestatee; thence along its main channel to the Chatahouchee, and thence to the Creek boundary. It being understood that all the islands in the Chestatee and parts of the Tennessee and Highwassee (with the exception of Jolly's Island in the Tennessee, near the mouth of the Highwassee) which constitute a portion of the present bonndary, belong to the Cherokee Nation. And it is also understood that the reservations contained in the Treaty of Fellico, signed the

25th day of October, eighteen hundred and five, and a tract equal to twelve miles square, to be located by commencing at a point formed by the intersection of the boundary line of Madison county, already mentioned, and the north bank of the Tennessee river; thence along the said line and up the said river twelve miles, are ceded to the United Sates in trust for the Cherokee Nation as a school fund, to be sold by the United States, and the proceeds vested as hereafter provided in the 4th article of this treaty; and also that the rights vested in the Unicon Turnpike Co. by the Cherokee Nation, according to certified copies of the instruments securing the rights and herewith annexed, and not to be affected by this treaty; and it is further understood and agreed by the said parties that the lands hereby ceded by the Cherokee Nation, are in full satisfaction of all claims which the United States have on them on account of the cession to a part of the nation who have, or may hereafter emigrate to the Arkansas; and this treaty is a final adjustment of that of the eigth of July, eighteen hundred and seventeen.

See also the preamble and 2d article of the treaty of 1828, page 311, viz:

Whereas, it being the anxious desire of the United States to secure to the Cherokee Nation of Indians, as well as those now living within the limits of the territory of Arkansas, as those of their friends and brothers who reside in the States east of the Mississippi, and who may wish to join their brethren of the west a permanent home, and which shall, under the most solemn guarantee of the United States, be and remain there forever, a home that shall never, in all future time, be embarrassed by having extended around it lines, or placed over it the jurisdiction of a Territory or State, nor be pressed upon in any way of any of the limits of any existing Territory or State; and whereas, the present location of the Cherokees in Arkansas being unfavorable to their present repose, and tending as the past demonstrates to their future degradation and misery; and the Cherokees being anxious to avoid such consequences, and yet not questioning their lands in Arkansas, as secured to them by treaty, and resting upon the pledges given them by the President of the United States and the Secretary of War, of March, 1818, and 8th of October, 1821, in regard to the outlet to the West, and as may be seen by referring to the

records of the War Department, still being anxious to secure a permanent home, and to free themselves and posterity from an embarrassing connection with the Territory of Arkansas, and guard themselves from such connection in future; and whereas, it being important not to the Cherokees only, but also to the Choctaws, and in regard also to the question which may be agitated in the future respecting the location of the latter, as well as the former, within the limits of the Territory or State of Arkansas, whenever it may become a State, of either or both of the tribes, the parties hereto do hereby conclude the following, viz:

ARTICLE II.

The United States agree to possess the Cherokee, and to guarantee it to them forever, and that guaranty is hereby solemnly pledged, of seven millions acres of land, to be bounded as follows, viz: commencing at the point on Arkansas river where the eastern Choctaw boundary line strikes said river, and running thence north the western line of Arkansas, as defined in the foregoing article, to the southwest corner of Missouri, till it crosses the waters of Neosho, generally called Grand river; thence due west to a point from which a due south course strikes the present northwest corner of Arkansas Territory; thence continuing due south on and west, the present boundary line of the Territory, to the main branch of the Arkansas river; thence down said river to its junction with the Canadian river; and thence up and between said rivers, Arkansas and Canadian, to a point at which a line running north and south from river to river, will give the aforesaid seven millions of acres thus provided for and bounded; the United States further guarantee to the Cherokee Nation, a perpetual outlet west, and a free and unmolested use of all the country lying west of the northern boundary of the above described limits, and as far west as the sovereignty of the United States, and its right of soil extend.

It being ascertained that the boundaries as above given included some of the lands previously assigned to the Creeks by a mutual agreement of the Cherokees and Creeks, a new line was established by the treaty of 1833, which line is or was up to 1866 the correct line of the Cherokee Reservation, as given in the treaty of 1835 and 1836.

It will thus be seen that all the lands held and possessed by the Cherokees west of the Mississippi in 1835, were acquired by exchange for lands held by the Cherokee Nation east of that river.

The eastern lands so exchanged were portions of that described by the 4th article of the treaty of 1791, which lands by the 7th article of the same treaty, "The United States solemnly guarantee to the Cherokee Nation." Statutes at Large, vol. 7, pages 39 and 40. The 4th article of the treaty of 1791, is in these words:

Article IV.

The boundary between the citizens of the United States and the Cherokee Nation, is and shall be as follows: Beginning at the top of the Cunakee mountain, where the Creek line passes it; thence a direct line to Tugelos river; thence northeast to the Ocunna mountain, and over the same along the South Carolina Indian boundary to the North Carolina boundary; thence north to a point from which a line is to be extended to the river Clinch, that shall pass the Holsten at the ridge which divides the waters running into Little river from those running into the Tennessee; thence up the river Clinch to Campbell's line, and along the same to the top of Cumberland mountain; thence to a direct line to the Cumberland river, where the Kentucky road crosses it; thence down the Cumberland river to a point from which a southwest line will strike the ridge which divides the water of Cumberland from those of Duck river, forty miles above Nashville; thence down the said ridge to a point from whence a southwest line will strike the mouth of Duck river.

It will be seen from this description that the lands occupied by the Cherokees of North Carolina were included within the boundaries of the Cherokee National Territory, and was a part of that solemnly guaranteed to the Cherokee Nation by the treaty.

That portion of the above described territory lying within the limits of North Carolina was claimed by that State as belonging to her by virtue of her charter from the British Government. This claim was never disputed. In 1783 North Carolina passed a law intended to reward certain citizens and others for valuable military and other ser-

vices. One section of this act was in the following words: See Laws of North Carolina, A. D. 1783, chap. 165, section 5:

And be it further enacted, That the Cherokee Indians shall have and enjoy all that tract of land bounded as follows, to wit: Beginning on the Tennessee, where the southern bonndary of the State intersects the same nearest to the Chickamauga; thence up the middle of the Tennessee and Holsten, to the middle of French Broad; thence up the middle of the French Broad river, (which lines are not to include any island or islands in said river;) thence up the same to the head thereof; thence along the dividing ridge between the waters of Pigeon river and Tuckasejan river to the southern boundary of this State; and that the lands contained within the aforesaid bounds shall and are hereby reserved unto the Cherokee Indians and their nation forever, anything herein to the contrary notwithstanding.

While the subsequent sections of said act make it an offense to buy, lease, or occupy any of said tract, bounded in the last quoted section, and declaring such possession or pretended title or grant utterly void.

This act was long anterior to the organization of the territory, (now State,) of Tennessee. The land granted to the Cherokee Nation is now embraced in the limits of four of the organized counties of Western North Carolina, and eight of the organized counties of East Tennessee. The whole area lying within North Carolina is estimated by Schoolcraft (Part 3d, page 598, at one million (1,000,000) acres.)

Up to 1835 North Carolina had not repealed or attempted the abrogation of her laws relating to these lands, nor had she done any act to disturb or molest the Cherokees in their peaceful occupancy and possession.

We here present so much of the treaty of 1835 as is necessary to show the Cherokee cession east of the Mississippi, and the consideration for such cession:

Article I.

The Cherokee Nation hereby cede, relinquish, and convey to the United States all the lands owned, claimed or possessed by them east of the Mississippi river, and hereby release all their claim upon the United States for spoliation

of any kind for and in consideration of the snm of five million of dollars to be expended, paid, or invested in the manner stipulated and agreed upon in the following articles :

Article II.

Whereas, by the treaty of May 6th, 1828, and the supplementary treaty thereto of February 14th, 1833, with the Cherokees west of the Mississippi, the United States guaranteed and secured to be conveyed by patent to the Cherokee Nation of Indians the following tract of country, "Beginning at a point on the old western territorial line of Arkansas Territory, being twenty-five miles north from the point where the territorial line crosses the Arkansas river; thence running from said north point south on the said territorial line where the said territorial line crosses Virdigris river; thence down said Verdigris river to the Arkansas river; thence down the Arkansas river to a point where a stone is placed opposite the east lower bank of Grand river at its junction with the Arkansas river; thence running south forty four degrees, west one mile ; thence in a straight line to a point four miles northerly from the north fork of the Canadian ; thence along the said four mile line to the Canadian; thence down the Canadian to the Arkansas; thence down the Arkansas to that point on the Arkansas where the Eastern Choctaw boundary strikes said river, and running thence with the western line of Arkansas Territory as now defined, to the southwest corner of Missouri ; thence along the western line of Missouri to the land assigned to the Senecas; thence on the south line of the Senecas to Grand river; thence up said Grand river as far as the south line of the Osage Reservation extended if necessary ; thence up and between said south Osage line extended west if necessary, and a line drawn due west from the point of beginning to a certain distance west, at which a line running north and south from said Osage line to said due west line will make seven million (7,000,000) acres within the whole described boundaries. In addition to the seven millions of acres of land thus provides for and bounded, the United States further gurantee to the Cherokee Nation a perpetual outlet west, and a free and unmolested use of all the country west of the western boundary of said seven millions of acres as far west as the sovereignty of the United States and the right of soil extend; Provided, however, that if

the saline or salt plain on the western prarie shall fall within said limits prescribed for said outlet, the right is reserved to the United States to permit other tribes of red men to get salt on said plain in common with the Cherokees; and letters patent shall issue by the United States as soon as practicable for the land hereby guaranteed.

And, whereas, it is apprehended by the Cherokees that in the above cession there is not contained a sufficient quantity of land for the accommodation of the whole nation on their removal west of the Mississippi, the United States in consideration of the sum of five hundred thousand dollars, therefore, hereby covenant and agree to convey to the said Indians and their decendants, by patent, in fee simple, the following additional tract of land situated between the west line of Missouri and the Osage reservation, beginning at the southeast corner of the same, and runs north along the east line of the Osage lands fifty miles to the northeast corner thereof; and thence east to the west line south fifty miles; thence west to the place of beginning, estimated to contain eight hundred thousand (800,000) acres of land; but it is expressly understood that if any of the lands assigned the Quapaws shall fall within the aforesaid bounds the same shall be reserved and excepted out of the lands above granted, and *pro rata* reduction shall be made in the price to be allowed to the United States for the same by the Cherokees.

From this it will be seen that for all the lands owned, claimed, or possessed by the Cherokees east of the Mississippi, the United States agreed to give four millions five hundred thousand ($4,500,000) dollars in cash, and eight hundred thousand acres of land lying contiguous to the tract conveyed to the Cherokees by the treaties of 1828 and 1833. The quantity of land ceded to the United States by this article was estimated by Ross and others at about ten million (10,000,000) acres. (See Senate Doc., page 286.)

Of course this included that owned and possessed by the Cherokees of North Carolina. The original draft of this article, (see Ex. Doc., 286, 1st session 24th Congress, page 94,) read as follows:

"The Cherokee Nation east hereby agree, cede, relinquish, and convey to the United States all their right and title to all their lands east of the Mississippi river, those lying within the States of Georgia, North Carolina, and Tennessee,

for the benefit of those States who claim the right of soil, and those within the State of Alabama for the benefit of the United States."

Article one, as finally agreed upon, and as first above given, is much more compact than as last given, and is quite as comprehensive in meaning. As understood, construed, and administered by the Government it extinguished all Cherokee title to lands held in common, no matter whether held by fee simple title or by mere possessory right.

By the 16th article of the same treaty it is provided that,

"The United States and the several States interested in the Cherokee lands shall proceed to survey the lands so ceded by the treaty."

And on the ratification of the treaty by the Senate, North Carolina, like the other States, did proceed to survey all the Cherokee lands within her limits, and since then she has sold or disposed of the whole of said lands to citizens or private settlers, ignoring any "right, title, or interest" set up to said lands by any Cherokee.

These facts *show how* the lands of the Cherokees west were acquired, and the consideration paid for them. They show clearly that the Cherokees of North Carolina as an integral part of the Cherokee Nation, as joint owner of the common property east of the Mississippi have contributed their full share in the purchase of the property west of that river; and that like other Cherokees, who have contributed no more, they are entitled to their proportion of the lands or any money arising from the sale of those lands. They are not left alone to the logic or equity of their case to establish their claim. They think their rights are clearly made out by treaty stipulations, statutory provisions, and the binding force of written agreements.

The Cherokees of North Carolina did not participate, either directly or by representation in the council of New Echota, at which the treaty of 1835 was negotiated.

On first being advised of its object, they forwarded to the Senate a respectful protest against its ratification. Subsequently they became satisfied that the treaty would be consummated, when they dispatched an agent to the City of Washington, instructed to examine the treaty, and to take such course in regard to it as in his judgment might be best.

When the agent reached Washington he found that the treaty had been sent to the Senate for its ratification. He was afforded, however, an opportunity of examining the treaty, and found the 12th article to read as follows :

" Those individuals and families of the Cherokee Nation that are averse to a removal to the Cherokee country west of the Mississippi, and are desirous to become citizens of the States where they reside, and such as are qualified to take care of themselves and their property, shall be entitled to receive their due portion of all the personal benefits accruing under this treaty for their claims, improvements, and per capita, as soon as an appropriation is made for this treaty."

The Cherokees of North Carolina had long since abandoned the hunter life, and were well advanced in civilization, education, and christianity, and were quitely engaged in the pursuits of Agriculture and the Mechanic Arts. This provision of the treaty held out to them an opportunity to do what a large majority of them had long desired to do, viz : An opportunity to become the owners of land in severalty and in fee simple, and to build up for themselves and their children, permanent homes where they could have the schools and churches of their choice. and as American citizens, enjoy the blessings of civilization, law, and order.

Other provisions of the treaty made and limited the expenditure of the five millions of dollars in such a way as seemed to render it certain that after they had been made, a large sum would remain for distributton, per capita, to each individual Cherokee or head of a family, which would enable such to pay for their pre-emptions, and to receive their homesteads. To place these questions or points beyond all dispute or liability to doubt as to who are the beneficiaries of this provision of the treaty, and as to what was meant by it, their agent conferred with the commissioners who negotiated the treaty, all of whom were in Washington, and the result of that conference was the entering into an agreement or mutual understanding, as to the precise meaning of this article, which explanatory agreement was reduced to writing, signed by the parties, and filed in the Indian Department.

We subjoin said agreement, which is as follows:

WASHINGTON CITY, May 26, 1836.

Whereas, William H. Thomas, authorized by a portion of the Cherokee citizens of and residing in the State of North Carolina to attend at this place for them, examine, and (if equal and unconditional rights were secured to them) sign a treaty made and concluded at New Echota, on the 29th of December, 1835, between the United States of America and Cherokee Nation of Indians, he, arriving here after it was submitted to the Senate for ratification, could have no opportunity of examining its provisions, and obtaining supplemental articles thereto, had any been necessary, to secure to the Indians above mentioned an equal share, proportioned to their numbers, of the proceeds of the sale without a new negotiation; and that, it was believed, would delay the ratification, and prevent the supplies being furnished in time to relieve the wants of the poor class of Cherokees; also, being of opinion that the undersigned delegation, had the right, and were disposed to do equal and impartial justice to all their people; that the powers conferred on the President and Congress of the United States to manage their affairs were intended for that purpose and no other; further, that the articles mentioned below, intended to prevent improper constructions, would be faithfully complied with, gave his assent to and assisted in obtaining the ratification of said treaty.

The delegation, whose names are hereunto annexed, for the Cherokees who have emigrated to and are expected to emigrate to their new homes west of the Mississippi, of the first part, and William H. Thomas for the Cherokees belonging to, or which shall belong to, the following towns and settlements: Qualla, Alarka, Aquorra, Stokoih, Cheeoih, and their respective settlements, expected to remain east, of the second part.

ARTICLE I.

It is admitted that the said Cherokees are entitled to one equal share, protioned to their numbers, in all the lands belonging to the Cherokee Nation of Indians, and notwithstanding they have been deprived of their share of the annuities since the year of 1820, are, nevertheless, entitled to all sums in the possession of the President of the United States for the use of, and annuities due from, the United

States to the Cherokee Nation of Indians, (except such as belong exclusively to the Cherokees now living west of the Mississippi,) their proportionate share of which benefits was intended to be secured to them by the 12th article of the New Echota treaty, which reads as follows: "Those individuals and families of the Cherokee Nation that are averse to a removal to the Cherokee country west of the Mississippi, and are desirous of becoming citizens of the States where they reside, and such as are qualified to take care of themselves and property, shall be entitled to receive their due proportion of all the personal benefits accruing under this treaty for their claims, improvements, and *per capita*, as soon as an appropriation is made for this treaty." The qualification, therein required, referred to the pre-emption privilege, which could not be allowed of, being inconsistent with the precious rights of the States.

Also believing it in the interest of those desiring to remain, as provided for in the above article, to purchase their lands, procure fee simple titles thereto, and be the acknowledged owners of their soil, (to them so dear,) protected by the laws of the States.

ARTICLE II.

That the number belonging to said town and settlements be accurately ascertained, two acting justices of the peace, in and for the counties in which they reside, shall annually take their census, make out and certify a list, showing the number of each town, which list shall be certified by the clerk and chairman of the county court; agreeable thereto, the President or agent of the United States is requested to pay them their proportionate share of all sums arising from the transfer or sale of the common property, as mentioned in the first article.

ARTICLE III.

It is further agreed to, that if any construction be given to any of the articles of the said New Echota treaty, whereby the Cherokees belonging to, or which shall belong to, said towns and settlements, shall be deprived of an equal share, proportioned to their numbers, of all sums arising from a sale or transfer of the common property mentioned in the first article of this agreement, payable to the Cherokee Nation of Indians or people, we will request the President and Senate

of the United States, and they are hereby requested to allow them such supplemental articles thereto as shall remove such improper constructions and enable them to receive their equal proportioned share as above mentioned.

ARTICLE V.

The said Cherokees, belonging to said towns and settlements, are to have the use of the hunting ground, adjoining to where they live, reserved to the Cherokee Nation by the 7th article of the treaty made at Philadelphia, on the 2d of July, 1791.

ARTICLE VI.

The Cherokees above mentioned, being desirous to have the translation of the Bible and Testament completed in their own language, for that purpose they agree to pay to such person or persons as may be employed for the same, the sum of five hundred dollars; also, after the translation is completed, for books, five hundred dollars more, to be paid on receiving them.

ARTICLE VI.

Should a division of the lands west of the Mississippi, belonging to the Cherokee Nation as a common property, take place, the above Cherokees shall be entitled to their share to be laid off for them.

Witness our hand and seal,

W. H. THOMAS, for N. C. Cherokees,
MAJOR RIDGE, his ⋊ mark,
JAMES FOSTER, his ⋊ mark,
WILLIAM ROGERS,
JOHNSON ROGERS,
ELIAS BOUDINOT,
JOHN SMITH, his ⋊ mark, } Arkansas Chiefs,
JAMES ROGERS, }
JOHN GUNTER,
ANDREW ROSS,
GEORGE WELSH, his ⋊ mark,
LONG SHELL, his ⋊ mark,
JOHN FIELDS, his ⋊ mark,
JAMES FIELDS, his ⋊ mark,

S. WATIE,
JOS. A. FOREMAN,
JAMES STARN, his ⋈ mark.
Interpreted by me, S. WATIE,
Attest: JAMES A FOREMAN,

On the 4th of July, 1836, a copy of this agreement was submitted to the then Commissioner of Indian Affairs, with a request that the decision of the Hon. Lewis Cass, the then Secretary of War, upon the correctness of the construction of the delegations of the provisions of the 12th article of the treaty of 1835 should be had. The following letter from the Comissioner of Indian Affairs was received in reply:

[TRUE COPY.]

The assignment and relinquishment within mentioned are recorded in Trust Fund Record "B," page 243.

MEMORANDUM.

DEPARTMENT OF THE INTERIOR,
WASHINGTON, D. C., *June* 8, 1868.

It being uncertain how much of the 800,000 acres will be taken by actual settlers under the terms of the treaty and supplemental article, ratified June 6th instant, it is understood that as soon as the number of acres so taken shall be ascertained, it shall be stated and put upon the back of this contract, as well as certified to Mr. Joy, that the amount he has to pay for, and the amount of his annual interest may be fixed and settled to avoid questions on that subject.

O. H. BROWNING,
Secretary of the Interior.

WAR DEPARTMENT,
OFFICE INDIAN AFFAIRS, *July* 19, 1836.

SIR: Your communication of the 4th instant has been laid before the Secretary of War, with the accompanying documents relating to the interest of the Cherokees residing in the State of North Carolina, in the treaty of December 29, 1835. I am instructed to inform you that it is the impression of the Department that the Cherokees in North Carolina

have an interest proportionate to their numbers, in all the stipulations of that treaty.

Very respectfully, your obedient servant,

O. A. HARRIS,
Commissioner.

William Rogers, one of the Cherokee Commissioners who negotiated the New Echota Treaty, gives his testimony as follows:

WASHINGTON CITY, *February* 1, 1840.

SIR: In reply to your inquiry, I have to state that I was one of the negotiating committee who, on the part of the Cherokees, entered into the treaty of December, 1835, with the Government of the United States, and was also one of a sub-committee appointed by the first-named committee, to examine said treaty with a view to ascertain whether it was such a one as ought to be signed by the committee of negotiation. It was the understanding of the parties to this treaty, before it was signed, that there were many families and persons amongst the Cherokees so averse to a removal to the west, that it was deemed politic and just to make the terms of the treaty such as to give perfect freedom of choice to all to go or stay, as they might prefer, excepting such only as might be deemed incompetent to "take care of themselves and property." This object was never lost sight of. The sub-committee most particularly insisted upon it; and not only upon the liberty of choice, but also upon securing to those who might prefer to remain, a share of the money arriving from the sale of the country, equal in every respect (the vested funds excepted) to that secured to emigrants. I recollect very distinctly that when the 12th article of said treaty was under consideration, the sub-committee objected to it as not being couched in language sufficiently explicit to put it beyond all doubt that those desirous to become citizens of the United States, were to receive their *removal and subsistence money.* The Commissioner of the United States was appealed to on this particular point, and in explanation stated that "due portion of all the personal benefits accruing under this treaty" were so comprehensive as to preclude all idea of any interpretation by any one so as to deprive those choosing to remain of their removal and subsistance money.

He asked, is this not a personal benefif? If so, it secured to them without a doubt. With this explanation the subcommittee were satisfied, and reported the treaty thus explained to the committee of negotiation, and it was so explained by the Commissioner to the people, and with this explanation signed and sealed. I have further to state that such a construction as this has been given to this article of treaty, so far as myself and many others are concerned, who are now and have always been residing on the east of the Mississippi. We have received our removal and subsistence money.

I am, respectfuly, your friend,
WILLIAM ROGERS.

This construction of the treaty is endorsed by the Government Commissioner who negotiated the treaty, as follows:

WASHINGTON CITY, *January* 30, 1840.

SIR: In reply to your communication, I will state unhesitatingly, that I was present when Mr. Schermerhorn, as the Commissioner on behalf of the United States, submitted to the Cherokee Indians the proposition on which is based the treaty of the 29th December, 1835 (and had examined its provisions before it was submitted.) He distinctly informed them that such as desired to remain east and become citizens of the States, would be entitled to receive all the personal benefits of the treaty, including the claims for removal and subsistence. This was at Red Clay Council Ground, in October, 1835.

After the same treaty was concluded and submitted to the Senate of the United States for ratification, in the spring of 1836, well recollect that you applied to Mr. Schermerhorn in my presence to know if the 12th article of the treaty secured to the Cherokees who should remain east, commutation for removal and subsistence allowance of $53.33 each, with all other advantages of the treaty, and his answer was, that on that point there could not remain a doubt, as such was the intention of the parties to the treaty, and on your requesting my opinion on the same subject, I gave it in accordance with that of Mr. Schermerhorn, not then, or now, in the least doubting the accuracy of that opinion.

On obtaining the opinion above stated, you agreed to withhold a supplement to the treaty which you had previously prepared and had deemed necessary, as an explanation

for the protection of the interest of the Cherokees in North Carolina, several hundred of whom you at that time represented.

I am, very respectfully, your obedient servant.

WM. Y. HANSELL,
Of Milledgeville, Georgia,

W. H. THOMAS, *Of North Carolina.*

Mr. Hansell is thus endorsed by the treaty Commissioner:

SIR: I have examined the foregoing letter of Mr. Hansell, and the statements therein made, as far as relates to what I stated to you in reference to the Cherokee treaty, are true.

J. F. SCHERMERHORN.

A. H. THOMAS.

In a special report of the Commissioner of Indian Affairs to the Secretary of War, dated March 31, 1846, the following position was taken:

The treaty of 1835 being the law of the land, the Executive has no authority to consider the Cherokee Indians, yet remaining in North Carolina, in any other light than as parties to that treaty, in common with the rest of the tribe east at the time.

By the supplementary article of that instrument, all claims to pre-emption rights and reservations were relinquished by the Indians, and for the latter a moneyed compensation was submitted. So far, therefore, as the North Carolina Indians were entitled to reservations, and have not been compensated therefor, they are entitled to be paid their value as unimproved lands. They are also entitled to compensation for spoliations upon their property, and for improvements possessed by them, so far as they have not been paid; *and they also possess equal rights with those who have removed to share in the money to be distributed per capita.*

WM. MEDILL,
Commissioner of Indian Affairs.

On the 11th of April, 1846, this decision of Hon. Wm. Medill was approved by Hon. Wm. L. Marcy, Secretary of War.

If any doubt remains as to the rights of all Cherokees to an interest in the property, it seems to us this doubt is settled beyond all question by the provisions of the treaty of 1846, Stat. at Large, vol. 9, p. 876, which is as follows:

ARTICLE 1ST.

That the lands now occupied by the Cherokee Nation shall be secured to the whole Cherokee people for their common use and benefit, and a patent shall be issued for the same, including the eight hundred thousand acres purchased, together without the outlet west, promised by the United States, in conformity with the provisions relating thereto, contained in the third article of 1835.

Which is further confirmed of the 4th, 9th, and 10th articles, as follows:

In consideration of the foregoing stipulation on the part of the United States, the Western Cherokees, or Old Settlers, hereby release and quit claim to the United States all right, title, and interest, or claims, they may have to a common property in the Cherokee lands east of the Mississippi river, and to exclusive ownership to the lands ceded to them by the treaty of 1833, west of the Mississippi river, including the outlet west, consenting and agreeing that the said lands, together with the eight hundred thousand acres ceded to the Cherokees by the treaty of 1835, shall be and remain the commou property of the whole Cherokee people, themselves included.

ARTICLE IX.

The United States agree to make a fair and just settlement of all the moneys due to the Cherokees, and subject to the per capita division under the treaty of 29th of December, 1835, which said settlement shall exhibit all money properly expended under said treaty, and shall embrace all sums paid for improvements, ferries, spolitations, removal, and subsistence, and commutation therefor; debts and claims on the Cherokee Nation of Indians, for the additional quantity of land ceded to said nation, and the several sums provided in the several articles of the treaty to be invested as the general funds of the nation; and also all sums which may hereafter be properly allowed and paid under the treaty of 1835. The aggregate of which said several sums shall be deducted from the six millions six hundred and forty-seven thousand and sixty-seven dollars, and the balance thus found to be due shall be paid over, per capita, in equal amounts to all those individuals, heads of families, or their

legal representatives, entitled to receive the same under the treaty of 1835, and the supplement of 1836, being all those Cherokees residing east at the date of said treaty and the supplement thereto.

ARTICLE X.

It is expressly agreed that nothing in the foregoing treaty contained shall be so construed as in any manner to take away or abridge any rights or claims which the Cherokees now residing in States east of the Mississippi river had or may have under the treaty of 1835, and the supplement thereto.

Under these provisions of the treaties the Cherokees of North Carolina were paid by your bureau the same per capita paid to the other Cherokees. Before this payment was made the question of the right of such Cherokees as had not removed west to participate in it was raised and fully considered and decided in your office, and also by the Secretary of the Interior.

The matter having been referred to the Attorney General he gave the subjoined opinion on the question now under consideration:

OFFICE OF ATTORNEY GENERAL, *April* 16, 1851.

Hon. H. H. STUART, *Secretary of the Interior:*

The questions stated by the Commissioner of Indian Affairs, and by you referred to me for my opinion and advice, have received due consideration. My answers are the following: Upon, "who are the nation within the meaning of the act?" and may payment be made to the authorities of the nation as its representatives?" if not, "who are entitled to the money? How shall they be paid?"

"The two appropriations of $189,442.76, and of $724,603.37, (making the aggregate $914,026.13,) relate to the same class of Indians, and, therefore, the questions upon these two appropriations are answered together.

"The payments must be made to the individuals of the Cherokee Nation per capita, not to the authorities of the nation.

"If the payment be made to all the individuals of the nation per capita, the faith of the treaties will be preserved, the purview of statute as well as the proviso will be obeyed

"For payment per capita to every individual composing the nation, will be payment to the nation.

"Ordinarily, a debt due to a nation by treaty, ought to be paid to the constituted authorities of the nation. But where the treaty and the law appropriating the money both direct the payment to all the individuals of the nation, per capita, the treaty and the statutes must prevail. According to the true intent and meaning of these treaties of 1836 and the treaty of 1846, taken together, as one whole, and comparing their several parts, thereby to find the sense of the contracting parties, as directed by the established rules for construing treaties and all other instruments, I am of the opinion that all the Cherokees who, at the date of the treaty of December, 1835, were residing within the limits of Georgia, North Carolina, Tennessee, and Alabama, or east of the Mississippi; and also those Cherokees who, at the date of the treaty of 6th of August, 1846, were residing east of the Mississippi, were entitled by the (15) fifteenth article of the treaty of 1835, to participate in the distribution of the balance of the purchase money provided for in that article.

"The treaty of 1846, does not expressly or by implication abrogate any of the interests of the Cherokees in the distribution per capita, provided for in articles 12 and 15 of the treaty of 1835. The treaty of 1846 intends to provide for the satisfaction of those claims, not to forfeit, repeal, or annul any of them.

"Under these provisions, my opinion is, that the distibution is to be made per capita and equally among all the individuals residing east, and also all those residing west, other than the "old settlers" found to be in existence at the time of the distribution. Each being considered as entitled in his own right, and not by representation of another who is dead, and the payment of these distributive shares should be made to the individuals entitled, if of competent age; the shares of children to be paid to the heads of families to which they belong, whether those heads of families be males or females, father or mother, or persons standing in *loco parentis*.

"In this mode I believe the intentions of all parties will be substantially carried into effect, and the just purposes of the Government of the United States fulfilled. To attempt to apply to these Indians any nice doctrines of distribution, as ordered by this or that of the several States of our

Union of vested rights and right vested in each individual Indian at the date of one or other of these treaties, and thence to be traced and claimed per sterpes through a line of descent, inheritance, or representation of persons "born in lawful wedlock" are ideas inapplicable to the known condition of an Indian tribe. The attempt to act upon them in this instance would lead to endless difficulty, delay, and confusion, and would moreover violate the substantial purpose, and the intenions of the treaties and the laws.

Question fourth:

"If any of the Cherokees who have never removed west of the Mississippi are entitled, may they be required to emigrate as a condition precedent to their being paid." Answer: "The treaty of 1835, article 12, conceded the rights of individuals and families of Cherokees, who were averse to removal to the Cherokee country west of the Mississippi, to remain east, and to receive their due portions of the money to be distributed per capita.

"The treaty of 1846, article 10, recognized these claims of the Cherokees, then at the date of the treaty residing east of the Mississippi river.

"On this subject I have herein before expressed my views. To require these Indians so residing east of the river Mississippi, at the date of the treaty of August, 1846, to remove to the Cherokee country west, as a condition precedent to their being paid their dividend per capita, of the balance of the purchase money for the lands east of the Mississippi river, ceded by their nation to the United States, would be without any authority of law, and a breach of the faith of the treaties of 1835, and 1846, as I think, and firmly believe.

"Very respectfully, yours, &c.,

"J. J. CRITTENDEN, *Attorney General.*"

This opinion was concurred in by the Secretary of the Interior and the Commissioner of Indian Affairs and the money paid in accordance with it, each North Carolina Cherokee receiving as his proportion of the money then on hand and subject to distribution under the treaty of 1836, the sum of about ninety-one ($91.00) dollars.

So much as to the recognition of equal right of the Cherokees of North Carolina by the Executive and Judicial branches of the Government. The recognition by Con-

gress has been no less distinct, which is not only shown by repeated acts passed for payment of pre-emptions, spoliations, and other claims, presented by the Eastern Cherokees, but by the act of the 29th of July, 1848, setting apart a sum equal to $85,286, as a fund to enable such of them as choose to do so to remove to the West, upon which interest at the rate of six per cent. per annum has been paid, or is now due, up to this time, (see Statutes at Large, vol. 9, page 264 and 265,) and act of 3d March, 1855, by which $42,200 was appropriated, to be paid *pro rata* to such as should agree to receive it in full for their removal and subsistance allowance, as provided in the treaty of 1835, the Secretary of the Interior being satisfied that the State of North Carolina had given her assent that the Cherokees might remain permanently resident in said State. (S. at L., vol. 10, page 700.) This recognition was upon the simple proposition of its exact justice.

As the treaty stood before the Senate at the time when the agreement was entered into, and when the North Carolina Cherokees signified their acquiescence in it, it provided for pre-emption rights to all who were averse to removal. Afterwards the right of pre-emption, the right to purchase their homes was stricken out of the treaty by the Senate, and assented to by the treaty commissioner without the knowledge or consent of the Cherokees of North Carolina, and thereby the privilege of buying homes for themselves and their families of the State of North Carolina, was denied them. Nevertheless, the Cherokees of North Carolina made no factious opposition to the treaty, but when possession of their homes was demanded by the white men, they quietly abandoned them and betook themselves to other and unoccupied lands, of the vast tract of which they had long regarded themselves as owners.

The Cherokees of North Caroliha have less reason, perhaps, to complain of ill treatment at the hands of the State than the Cherokees of any other State established on the former territory of the nations; yet for more than thirty years they have been almost homeless wanderers and outlaws in the land of their fathers, denied the privilege of being land owners, denied all political and civil rights, excluded from all courts as parties capable of suing and being sued, their competency as witnesses being denied, they are and were utterly powerless to assert or maintain the sim-

plest rights of men, or protect themselves against the oppressions, craft, or frauds of the whites.

In 1838, when the power of the General Government was exercised to force the Cherokees to the country west of the Mississippi, many of their numbers were seized, and removed at the point of the bayonet; but such was the "aversion" of the great mass of them to removal that they betook themselves to the mountains and secret places of the wilderness, where they concealed themselves, subsisting upon roots and nuts, until the hunt for them by the soldiers was given over. Their suffering and losses during that time have never been fully told, and can never be indemnified.

By the 12th article of the treaty of 1835, they had reason to believe, and did believe, that they had the right to remain or to remove; that they had the right to elect whether they would become citizens, or continue as Indians, and that if they preferred civilization to the savage state, they would receive their "due portion" of the price for which their lands were sold, and be secured in all the rights and immunities of citizens of the republic. How these reasonable expectations have been realized are well known to the Government.

After waiting from 1836 to 1851, the sum of $91.00 per capita, is paid to about 1,500 Cherokees, being an aggregate of about $136,500. This added to the $85,276 set apart for them in 1848, (but which they have never received) make an aggregate of $231,776, the sum total for the million and a half of acres North Carolina land wrested from them under the treaty of 1835, to say nothing of what they had surrendered under former treaties, as a part of the nation, which exceeded three million of acres; making the total amount received by them less than one cent per acre for the land conveyed to the Government under various treaties.

The Cherokees of North Carolina say that all the lands held by the Cherokee Nation west, and all the income and annuities enjoyed by them, are held and enjoyed, in consideration of national land exchanged or sold from the national domain east of the Mississippi, and at the final sale, the privilege of becoming citizens, or continuing Indians, was left to their voluntary choice, with no declaration of forfeiture of their personal interests in the common property, should they prefer to become citizens. Like other Indians

who have severed their tribal relations, the North Carolina Cherokees claim that they had a right to expect, and did expect, when they made their election to become citizens under the treaty of 1835, their proportion of common property or fund would be turned over to them. This was not done then, and has not yet been done, and they were not able in 1835, and have not been since, to carry out their wishes as to citizenship.

Under the various treaties prior to and including that of 1836, the lands of the Cherokees, east of the Mississippi, were exchanged for about fourteen millions (14,000,000) acres, including the outlet west of that river. By the treaty of 1866, this amount of land is admitted to be far in excess of the needs of such of the Cherokees as have emigrated to the west, and measures are inaugurated for reducing the reservation and selling off the surplus. The Cherokees of North Carolina approve of these measures as they regard them as the first proper steps to be taken for repairing, in some measure, the wrong and injustice inflicted upon them in 1835.

As the lands are, as declared by the treaty of 1846, and as is well known to all the parties interested, "the common property of the whole Cherokee people," the Cherokees of North Carolina demand that their "due portion" or share of the proceeds of the sales of such of it as is not needed for Cherokee occupancy, shall be paid over to them per capita, and that they be left now, as they were left by the treaty of 1835, free to elect whether they will purchase property and become citizens of the State of their birth—as by the new Constitution of North Carolina they may do—or remove to the country west of the Mississippi. They also demand that their "due portion" of the old school fund of the nation, and their "due portion" of the old commuted annuity be returned to them, and that interest on their proportion of these funds for the time they have been deprived of them, be made up to them.

The Cherokees of North Carolina respectfully submit that for nearly one hundred years last past, they have striven, and successfully, to abandon the hunter's life and adopt civilization. At this time they all claim to be civilized. Among them a larger proportion of their numbers are connected with Christian churches than can be found among any equal number of people in the State; nearly every one of them can read the Bible in Cherokee, and prior to the late

war a very large proportion of the children were educated in the English primary branches. It is safe to say that in these respects the Cherokees of North Carolina will compare favorably with communities of equal numbers in any of surrounding States. The effect of these efforts at civilization upon their character is most marked and decided. They are all temperate, the most of them belonging to temperance organizations. Such a thing as a drunken Cherokee is scarcely known in North Carolina. They are free from the sin of licentiousness; such a thing as illicit intercourse between the sexes is almost unknown among them. They point with pride to the fact that for years not an illegitimate birth has occurred among their people. There are very few among them of mixed blood, and such as have been born in wedlock. It is seldom that one of their number is prosecuted for crime of any description, and at this time it is believed not a single Cherokee is undergoing punishment for crime in State prisons. Even the suffering and demoralization of the late war, in which the Cherokees bore a considerable part, on compulsion, in behalf of the rebels, and by volunteering in behalf of the Union, did not seriously effect the fixed character of the people. But few of those mustered out of the army at the close of the war were poisoned by disease, or had contracted habits of dissipation. Imbued with a love of civilization, education, and religion, attached to the quiet of agricultural pursuits, in which they are engaged, and fondly attached to the land of their birth and the graves of their fathers, a very large part of the Cherokees of North Carolina are still averse to a removal to the west, and prefer to embrace the opportunity held out to them by the new Constitution of the State to become citizens, to draw out of the national property their individual portions, to sever their connection with the tribe and settle down where they are, in the land of their choice, where they are fully persuaded they will in future enjoy the civil and political rights of citizens, and the blessings of education and Christianity.

The Government is to-day inviting the individuals of other tribes, qualified for citizenship, to do just what the Cherokees of North Carolina asked and expected to do in 1835, and what they here again ask to do. In proof of this we refer to various Indian treaties ratified since 1854, or now pending before the Senate, and to the report of the Indian Peace Commission to the present Congress. Why should

the Cherokees be refused permission to do that which is thought to be so desirable for members of other tribes or nations? It is because a doubt is felt of their fitness for civilization or Christianity, or their competency to take care of themselves. Their history for the last thirty years ought to settle any such doubts, and to this they confidently appeal. We challenge the history of the United States to produce an instance of a people so tried by outrage and oppression, who have gone through the trial with a better or purer record. This is not spoken in any spirit of boasting, but is appealed to as evidence of our fitness for the civilization and citizenship to which we aspire, and for which we pray.

Having thus, as briefly as we could, recited our treaty relations to the Government, and our relations to our own people, and the rights growing out of those relations, and having also presented the past and present condition of our people and their cherished desires, we submit the case to your candid consideration, hoping and believing that the justice so long withheld, will be fully accorded us by the decision you will give in the premises.

Very respectfully,

THE NORTH CAROLINA CHEROKEE DELEGATION,

By JAS. G. BLUNT, *Attorney.*

No. 8.

Reply of the Delegation from the Cherokee Nation to Claim of the Cherokees of North Carolina.

WASHINGTON, D. C., *January* 19, 1869.

Hon. N. G. TAYLOR, *Commissioner of Indian Affairs:*

SIR: We have just perused a pamphlet addressed to you, entitled—

"Claim of the Cherokees of North Carolina to an equal participation, in proportion to their numbers, in all the moneys and property of the Cherokee Nation.

"JAMES G. BLUNT, *Attorney.*"

The delegation of the North Carolina Cherokees, under date of the 12th of June, 1868, in a statement of their case addressed to you, and prefixed to that pamphlet, claim for

their constituents, more specifically, that they are "entitled "in proportion to their numbers, *per capita*, to an equal "share in all the lands belonging to the Cherokee Nation "west, (or claimed to belong to them,) and to a like share "in all moneys derived from the sale of any portion of said "lands acquired by the treaty of 1835."

However absurd this hitherto unheard of claim may be, it derives some importance, and deserves notice at our hands, from the fact that it is made the pretext for a protest by the North Carolina Cherokee Delegation against the ratification of a treaty now pending before the Senate entered into with us by the United States on the 9th of July last.

It may be stated, in general terms, that the North Carolina Cherokees claim a share, in proportion to their numbers, of all the property, real and personal, owned by the Cherokee Nation west of the Mississippi. Let us dispose, first, of their pretended interest in

The Lands.

General Blunt, their attorney, quotes from the treaties of 1817, 1819, and 1828; and on page 3 of his pamphlet makes the following announcement:

"It will thus be seen that all the lands held and possessed "by the Cherokees west of the Mississippi, in 1835, were "acquired by exchange for lands held by the Cherokee Na- "tion east of that river."

In how far is this correct?

We first take up the

Treaty of 1817.

The preamble to that treaty [Statutes at Large, vol. 7, Indian Treaties, p. 156] declares that there came to Washington, in 1808, two Cherokee delegations—one representing those who desired to engage in civil pursuits, and the other those who desired to continue their hunter life, cross the Mississippi, and occupy some vacant lands of the United States. To satisfy the wishes of both parties, the treaty of 1817, now under consideration, was entered into. Provision was made for those who desired to emigrate, and for those who wished to remain. In article I., a cession of lands east of the Mississippi is made to the United States. They are stated, it is true, to be made by the whole Chero-

kee Nation, but out of the lands, or, to use the words of the treaty, "in part of the proportion of land in the Chero- "kee Nation, east of the Mississippi, to which those now on "the Arkansas, and those about to remove there, are justly "entitled." [Statutes at Large, vol. 7, p. 157.]

And the object of this cession by the whole Cherokee Nation of what belonged only to those on the Arkansas, and to those about to remove there, is apparent—namely: that not otherwise would the title have been perfect.

Article II. also contains a cession by the whole Cherokee Nation; and if, from the text of the article alone, the presumption be not fair that this cession also was out of that "proportion justly belonging to the Cherokees on the Ar- "kansas, and those about to remove there," the 5th article, which Gen. Blunt quotes, makes the presumption conclusive; for it speaks of the lands which, under both the 1st and 2d articles, the United States may receive from the Cherokee Nation "as the just proportion due that part of the nation on the Arkansas, agreeably to their numbers." (Art. 5, p. 158.)

Not only is the treaty unambiguous as to the ownership of the land obtained by the United States, but also as to the parties to whom the consideration for that land was given, Article V. expressly declaring that the United States give in exchange acre for acre "to that part of the Cherokee Nation on the Arkansas."

So that if the lands thus obtained under the treaty of 1817 by the Western Cherokees can, in the language of Mr. Blunt, be said literally to have been received in "exchange for lands held by the Cherokee Nation east of" the Mississippi, it can truthfully be said, in both letter and spirit, they were held by that nation as "the just proportion" belonging to the Cherokees on the Arkansas.

In that manner were the Western and Emigrant Cherokees provided for. The party that elected to remain East to engage in the pursuits of "civilized life" were also provided for. Besides the extensive and valuable lands that remained to the Eastern Cherokees, in proportion to their numbers, after the cession of the portion belonging to the Western and Emigrant Cherokees, the United States gave (Art 8, p. 159) "to each and every head of any Indian family residing on the east side of the Mississippi river on the lands that are now, or may hereafter be surrendered to

the United States, who may wish to become citizens of the United States," * * * "a reservation of six hundred and forty acres of land, * * with improvements." And these reservations were not to be paid for by the heads of such Indian families, nor other lands given in exchange for them, but were to be deducted from the amount which the Western Cherokees had ceded to the United States.

It seems clear that the treaty did not—indeed, it would be absurd to suppose that it could—contemplate that the Cherokees who preferred to remain East and become citizens should enjoy not only the lands which they owned in proportion to their numbers, and the reservations given them, but should also, while remaining, be entitled to a per capita share in the lands of the Western Cherokees, which were obtained, as again and again repeated in the treaty, by exchange for lands to which said Western Cherokees had a right. The alternative was held out either to remain or to remove; if the latter, they should find a home on the lands of their brethren, the Western Cherokees, and in that case they must yield up their reservations to the United States. They have chosen to remain, and the inference is irresistible that, until they do remove, they can have no vested interest in the Western lands.

Treaty of 1819.

Gen. Blunt next quotes from the treaty of 1819, but it is not seen how it helps to sustain the claim of his clients to any share in the Western lands, inasmuch as the Western Cherokees took no lands under this treaty. But it does strengthen the position we have taken, and in this wise:

The tract of land ceded by the former treaty of 1817 to the United States was not considered by the latter as extensive as that which the Western Cherokees were probably entitled to, and an additional cession was made by the treaty of 1819, now under consideration; and this latter cession was declared to be in full satisfaction of all claims which the United States have on the Cherokee Nation on account of "*the cession to a part of their nation who have or may hereafter emigrate to the Arkansas*," thus perpetuating the language of the treaty of 1817, and confessing that at the end of nearly two years from the date of the treaty of 1817, the Cherokees who remained East did not consider themselves as owning any part of the lands ceded to the Cherokees

"on the Arkansas, and to those who might emigrate thither." [Stats. at Large, vol. 7, Indian Treaties, Art. 1, p. 196.]

Treaty of 1828.

The third and last treaty quoted by Gen. Blunt before announcing his *dictum*, that "all the lands held and possessed by the Cherokees west of the Mississippi, in 1835, were acquired by exchange for lands held by the Cherokee Nation east of that river," is the one of May 6, 1828.

It is difficult to conceive why the attorney for the North Carolina Cherokees should print any portion of this treaty, for the whole text is assuredly fatal to the interests of his clients.

We find that the parties to this treaty were, the United States of the one part, and of the other part the "*Chiefs and Headmen of the Cherokee Nation of Indians west of the Mississippi, they being duly authorized and empowered by their nation.*"

It is by this treaty that 7,000,000 acres of land are, as a "permanent home," ceded to "the Cherokees now living within the limits of the Territory of Arkansas," and "to those of their friends and brothers who reside in States east of the Mississippi and who may wish to join their brothers of the west;" in addition to which a "perpetual outlet" is granted to them as far west as the sovereignty of the United States extends. It would be as reasonable to insist that this outlet was intended for the use of the Cherokees who elected to remain east, as that the "permanent home" was intended for them without complying with the condition or removal.

Now, from whom proceeded the consideration given for this land? Not, as Gen. Blunt says, the whole Cherokee Nation, but, as article 7 expressly declares, the *Chiefs and Headmen of the Cherokee Nation of Indians west of the Mississippi*, with whom the treaty was made. And the consideration was that they "do hereby agree, in the name and behalf of their nation, to give up, and they do hereby surrender to the United States, and agree to leave the same within fourteen months, as hereinbefore stipulated all the lands to which they are entitled in Arkansas, and which were secured to them by the treaty of 8th of January, 1817, and the convention of the 27th of February, 1819." [Stats. at Large, vol. 7, Indian Treaties, Art. 7, p. 313.]

To show, if there be need, still more conclusively that this

cession of the 7,000,000 acres and the grant of the "perpetual outlet" were for the benefit of the Cherokee Nation west of the Mississippi and for such of their brothers as would join them, we quote from article 8, p. 313:

"The Cherokee Nation west of the Mississippi having, by this agreement, freed themselves from the harrassing and ruinous effects consequent upon a location amidst a white population, and secured to themselves and their posterity, under the solemn sanction of the guarantee of the United States, as contained in this agreement, a large extent of unembarrassed country; and that their brothers yet remaining in the States may be induced to join them and enjoy the repose and blessings of such a state in the future, it is further agreed"—and then follows a list of inducements intended to prevail upon the Cherokees east of the Mississippi to remove and join their brothers West.

We have thus shown beyond refutation, we think, that under all three of the treaties noticed the land in question was ceded to, and for consideration given by, the Western Cherokees; and that the only possible interest which the Cherokees of North Carolina ever had in those lands was the contingent one to vest on their removal thither.

What now of the Treaty of 1835?

The only lands acquired under this treaty were 800,000 acres, known since as the "Neutral Lands," in Kansas. These were purchased by the Cherokee Nation east and conveyed to the Cherokee Nation West, for the purpose of accommodating the Cherokee Nation East on its removal; it being apprehended, as stated in article 2, (p. 480,) that in the cession of the 7,000,000 acres under former treaties, there was "not contained a sufficient quantity of land for the accommodation of the whole nation on their removal west of the Mississippi." The Cherokee Nation East has removed, and is now enjoying a common interest in these lands; the North Carolina Cherokees did not, however, choose to avail themselves of a like advantage by removal, and there is not a word in the treaty from which it can be inferred that they may remain where they are and claim a share of these lands.

The same argument will equally apply if the United States should deem it proper, in behalf of the public interests, to purchase these lands from their owners—a *pro rata* share of the proceeds could in no event properly go to

the North Carolina Cherokees unless they removed West. Even then the claim would be barred, if the Cherokee Nation did not exercise its magnanimity, for it is a matter of history that the Cherokees of North Carolina long since ceased to be members of the Cherokee Nation. That they have Cherokee blood in their veins is true, but they became citizens of the State of North Carolina, and thereby renounced their share of the "permanent home" intended and set apart for the Western Cherokees and such of their "brethren" as might wish to join them.

That they did become such citizens is evidenced by the fact that they have been so acknoweldged by the courts of the United States in which they have been permitted to sue. In the case of J. K. Rogers (for himself and in behalf of 2,133 Eastern Cherokees) vs. the United States, (Court of Claims,) Judge Scarburgh, on the 29th November, 1855, held the following language in delivering the opinion of the court:

"Having availed himself [Rogers] of the privilege of becoming a citizen of the State where he resided, he no longer remained an 'individual' of the Cherokee Nation."

Had Rogers and the Cherokees whom he represented been regarded as a part of the Cherokee Nation they would not have been permitted to bring suit in the couts of the United States, under the decision of the Supreme Court in the case of "The Cherokee Nation vs. The State of Georgia," 5 Peters, p. 1, (9 Curtis, 178.)

In addition to which, it may be stated, that Mr. Thomas, the attorney for the North Carolina Cherokees, placed on file at the Indian Office the *status* of his clients, as citizens of North Carolina. [See documents accompanying Mr. Polk's message, dated April 13, 1846, on Cherokee difficulties.]

The foregoing argument not being affected by subsequent treaties, we come to the claim made by the North Carolina Cherokees to a

SHARE IN ALL OTHER NATIONAL PPOPERTY.

But the North Carolina Cherokees, not content with claiming a share in all the lands held by the Cherokee Nation, claim also a share in all the other property and interests of the nation. They base their claims—

1st. Upon the 12th article of the treaty of 1835.

2d. An agreement entered into by and between Wm. H. Thomas, as their agent, and certain other parties.

3d. The 1st and 10th articles of the treaty of 1846.

4th. The opinion of Attorney General Mason, of 19th September, 1846, and the opinion of Attorney General Crittenden, of the 16th of April, 1851.

5th. The decisions of the Secretaries of War and Interior.

6th. The uniform practice of the Indian Bureau, in the disbursement of appropriations made by Congress to fulfil the stipulations of the treaty of 1835.

The first article of the treaty of 1846 relates exclusively to a patent for the Cherokee lands, and has no bearing upon the class of claims now under consideration.

The 10th article simply declares that nothing contained in the treaty "shall be so construed, as in any manner to take away or abridge any rights or claims which the Cherokees, now residing in States east of the Mississippi, had, or may have, under the treaty of 1835, and the supplement thereto."

There remains then only the 12th article of the treaty of 1835, the first paragraph of which, by a construction which we shall show to be erroneous, is supposed to have suggested the sweeping demands which the North Carolina Cherokees have for the first time ascertained they had a right to make. It is in the following words:

"Those individuals and families of the Cherokee Nation that are averse to a removal to the Cherokee country west of the Misssissippi, and are desirous to become citizens of the States where they reside, and such as are qualified to take care of themselves and their property, shall be entitled to receive their due portion of all the personal benefits accruing under this treaty for their claims, improvements, and *per capita*, as soon as an appropriation is made for this treaty."

What were the "personal benefits accruing under this treaty?" The language of the document itself is clear and explicit.

1st. An interest in the 800,000 acres ceded by article 2, conditioned, as in the case of the other lands, upon removal and which we have already noticed.

2d. Removal and subsistence money, guarantied by article 8, which awaits a compliance by the Cherokees yet east, with the condition on which it was to be paid.

3d. "Improvements and claims," alluded to in article 9,

a matter in nowise connected with the present demands of the North Carolina Cherokees, being strictly a controversy, with the United States, if still unsettled.

4th. "*Per capita.*"—Article 15. * * * * "After deducting the amount which shall be actually expended for the payment for improvements, ferries, claims, for spoliations, removal, subsistence, and debts, and claims upon the Cherokee Nation, and for the additional quantity of lands and goods for the poorer class of the Cherokees, and the several sums to be invested for the general national funds, provided for in the several articles of this treaty, the balance whatever the same may be, shall be equally divided between all the people belonging to the Cherokee Nation east, according to the census just completed * * * ."

This division was made. * * * * And if exorbitant sums were paid to Ross and others for the removal of Eastern Cherokees, their brethren of North Carolina, who have not yet removed, must look to the United States for the deficiency in their *per capita*, caused by illegal disbursements.

The claims which we are noticing are based, further, upon—

2d. "The agreement, in writing, entered into by and between themselves and the Western Cherokees, by their respective delegates, as to the right of the respective parties, whilst the treaty was pending for ratification before the Senate of the United States, which agreement was filed in and is of record in your [the Indian] office."

General Blunt, the attorney for the North Carolina Cherokees, holds the following language in his pamphlet, page 7: "Other provisions of the treaty made and limited the expenditure of the five millions of dollars in such a way as seemed to render it certain that after they had been made a large sum would remain for distribution, per capita, to each individual Cherokee or head of a family, which would enable such to pay for their pre-emptions and to receive their homesteads. To place these questions or points beyond all dispute or liability to doubt, as to who are the beneficiaries of this provision of the treaty, and as to what was meant by it, their agent conferred with the commissioners who negotiated the treaty, all of whom were in Washington, and the result of that conference was the entering into an agreement or mutual understanding as to the pre-

cise meaning of this article, which explanatory agreement, was reduced to writing, signed by the parties, and filed in the Indian Department."

We do not desire to comment on the introduction of this agreement; we will simply dismiss it in the language of John Y. Mason, whose opinion, as Attorney General, the North Carolina Cherokee Delegation refers to:

He says, "an agreement entered into by William H. Thomas, on the part of the North Carolina Indians, and the treaty party, is also transmitted. This last mentioned paper bears date three days after the ratification of the treaty, and does not appear to have any title to be regarded as a part of the treaty"—to which we might add, that, said agreement upon its face shows it was made between the "treaty party" and the "North Carolina Cherokees," (both of whom were portions of the Cherokee Nation east,) with the name of one JAMES STARN, affixed to it as an Arkansas chief. No person of that name was ever Chief of the Arkansas Cherokees; nor was any person ever authorized by the Western Cherokees to sign such an agreement.

It may be well, however, to notice briefly the opinion of Mr. Mason, on which the delegation say they partly base their claims. The date of the opinion, as given by them, is September 19, 1846. This is probably a typographical error in General Blunt's pamphlet. The proper date is 19th September, 1845.

If you will turn to page 435, volume 4, Opinions Attorney General, you will find that the advice given and the conclusions announced related to the following questions only:

1. As to whether the Cherokees remaining in the States of North Carolina and Tennessee were entitled to the commutation for removal and subsistence given by the 8th article of the treaty of 1835 to those who have removed west of the Mississippi.

2. As to whether the lands in North Carolina sold by the State belonging to the Indians residing on them.

It is needless to say more than that the removal and subsistence money, about which advice was asked, is in the Treasury awaiting, as we have before remarked, the removal west of the North Carolina Cherokees.

As to the lands which the State sold, we do not see that it affects this controversy. It was simply a matter between North Carolina and the Cherokees within her limits.

Equally unfortunate are the North Carolina delegation, when they refer to the opinion of Mr. Crittenden of 16th April, 1851, in support of their demands. It related to the distribution of the *per capita* moneys provided by the treaty of 1835—a distribution which, as we have before said, has long since been made.

The delegation next refer, in support of their demands, to "the decisions of the Secretaries of War and Interior." What decisions are meant we are at a loss to know, unless it be some correspondence printed in General Blunt's pamphlet.

On page 9 is a letter from C. A. Harris, Commissioner of Indian Affairs, dated July 19th, 1836, in which he states that it is the impression of the War Department that "the Cherokees in North Carolina, *have an interest, proportionate to their numbers, in all the stipulations* of" the treaty of December 29th, 1835.

If the North Carolina Cherokees have failed to secure that interest, their recourse is against the United States, and we look in vain for a single word in that treaty which entitles them to a share, which they claim, in all our national property.

On page 11, General Blunt quotes from a special report, dated March 31, 1846, made to the Secretary of War by Mr. Medill, then Commissioner of Indian Affairs, and which, it is stated, was approved by the Secretary on the 11th of the following month.

We are at a loss to conceive how it substantiates any of the demands of the North Carolina Cherokees. The quotation is given entire:

"The treaty of 1835, being the law of the land, the Executive has no authority to consider the Cherokee Indians, yet remaining in North Carolina, in any other light than as parties to that treaty, in common with the rest of the tribe east at that time.

"By the supplementary article of that instrument all claims to pre-emption rights and reservations were relinquished by the Indians, and for the latter a moneyed compensation was substituted. So far, therefore, as the North Carolina Indians were entitled to reservations, and have not been compensated therefor, they are entitled to be paid their value as unimproved lands. They are also entitled to compensation for spoliations upon their property, and for improvements

possessed by them, as far as they have not been paid; *and they also possess equal rights with those who have removed to share in the money to be distributed per capita.*"

We have no complaint to utter against this "special report," nor the Secretary of War's approval of it. If it have any binding authority, it makes the United States responsible for the payment to the North Carolina Cherokees of a moneyed compensation for their *relinquished reservations*, for *spoliations upon their property*, and for *improvements possessed by them;* but surely no one ever dreamed that the Cherokee Nation west were responsible for such compensation. The object, however, of introducing this "special report" was doubtless to call attention to the italicised sentence at the close, and to found upon it some right to the demands we have been considering. The sentence, reproduced, is as follows:

"*And they* [referring to the North Carolina Cherokees] *also possess equal rights with those who have removed to share in money to be distributed per capita.*" This is the keynote so often sounded by the delegation, and by their attorney, in the pamphlet under consideration; but whatever music it may have for their ears, it is set to words that convey no intelligible meaning pertinent to the subject we are discussing. We repeat for the last time, what is well known to your office, Mr. Commissioner, that the *per capita* alluded to throughout the whole history of Cherokee affairs, was the distribution of such remainder of the five million dollars obtained for the lands east, as might exist after deducting certain moneys specified in the treaty of 1835—which distribution has long since been made, and could not by forced construction be made to apply to a distribution of *per capita* provided for by any other treaty.

We have thus noticed, at considerable length, the points sought to be made by General Blunt, and it now remains for us to notice

THE MEMORIAL OF THE NORTH CAROLINA DELEGATION,

recently addressed to the Senate of the United States, protesting against the ratification of our pending treaty until their demands for a share of all our national property shall be granted.

Much of the memorial is devoted to their demands in general, and which we have already discussed. It does,

however, make a specific demand, which is utterly ignored by treaty, and which their own attorney, Mr. Thomas, twenty-two years ago, treated as though it had never entered the head of a North Carolina Cherokee to ask. The demand is couched in the following words:

"*Third.* Because we desire the benefit of our share of the National Trust and School Funds, that we may educate our children, which privilege, (though a large fund was placed in the Treasury of the United States in trust for educational purposes years ago,) we have never enjoyed in the value of the first dollar."

That the North Carolina Cherokees were not entitled to enjoy "in the value of the first dollar" is conclusively shown, not only by the treaty of 1835, but by the admissions of Wm. H. Thomas, their former attorney.

Under that treaty and the supplementary one of 1836, certain sums were set apart for specific purposes. What those sums were, and for what purposes set apart, and for whose benefit, let Mr. Thomas speak. In a paper marked "Part IV," and entiled "Argument in support of the claims of the North Carolina Cherokee Indians," signed "Wm. H. Thomas, an adopted Cherokee, and attorney for the Eastern Cherokees," to be found in Senate Docs., vol. 35, 1845–'6, as one of the papers accompanying President Polk's message of April 13, 1846, the following exposition of Cherokee affairs is made by Mr. Thomas, (pp. 179, 180):

"As an inducement to unite at some future period the Cherokee people in the country assigned for their permanent residence West, $500,000 were deducted from the price of the lands East, for 800,000 acres West, adjoining to the lands occupied by former emigrants, for the use of the tribe West.

"Also, a national fund was provided (10th article) of..... $200,000

"For the purposes of education was provided under the 10th article and supplemental 3d article..... 250,000

"For the orphans of the tribe, under the 10th article, was provided the sum of..... 50,000

$500,000

"Also, a permanent annuity arising under treaties made with the Eastern Cherokees, was com-

muted for $214,000, and transferred West for the use of the whole Cherokee people west of the Mississippi, as a national fund.....	214,000
"In addition to this, the school fund, created by sale of lands set apart for that purpose by the Eastern Cherokees, was transferred West to be added to the school fund.....	50,000
	$764,000

"The sum, therefore, of $764,000, in which the Cherokees that remained in the States had a common interest, was transferred West."

On page 181, Mr. Thomas makes a still more explicit renunciation of the claims of his clients on these funds. His language is as follows:

"Having shown what the share of the North Carolina Indians would be if an equitable distribution of the funds were made, *after setting apart* $764,000 *for the separate use of the tribe West*," [Italics our own] "I will now proceed, etc., etc."

But, although this addission is made by the North Carolina Cherokees themselves through their attorney, we should not feel disposed to take advantage of it, were it not borne out by the treaty.

The 10th article of the treaty of 1835, in words susceptible of but one meaning, states that the funds above-mentioned by Mr. Thomas, shall be invested by the President of the United States "in some safe and most productive public stocks of the country for the benefit of the whole Cherokee Nation who have removed or shall remove to the lands assigned by this treaty to the Cherokee Nation west of the Misssippi."

It results, therefore, that the North Carolina Cherokees have not a pretence of right to the "first dollar" they are so eager to enjoy out of those funds.

In Conclusion,

Whilst we thus resist, and shall continue to resist, all the demands which the North Carolina Cherokees make to any—even the least—participation in our national property, until they shall comply with the often-expressed policy and long desire of the Government that they remove to the Cherokee

country West—nay, more, even demand the forfeiture on their part of the $53.33⅓ *per capita* provided for their removal and subsistence, if they much longer remain East; yet, to show the spirit which animates us, we beg to remind you, Mr. Commissioner, of the generous provision made for those Indians in the very treaty now pending before the Senate, and against the ratification of which they are now protesting.

Article XV. provides as follows:

"It is hereby agreed and stipulated that if the Cherokees, or any of them east of the Mississippi and elsewhere, shall, within three years from the ratification of this treaty, remove to and permanently settle within the limits of the Cherokee Nation, such Indians shall thenceforth have all the rights, privileges, and immunities of other citizens of the Cherokee Nation, and be upon a footing of perfect equality in every respect with other citizens."

It is thus seen, that although they have lost their rights by becoming citizens of North Carolina, electing so to do rather than remove, we hold out to them the most liberal inducements; and this, not from selfish motives, but because, having Cherokee blood in their veins, we desire their prosperity and happiness, and their elevation from the dependent condition in which most of them are described by credible persons to be—"driven about like cattle by Wm. H. Thomas," hereinbefore alluded to, "who has possessed himself of all their *per capita* money and invested it in lands in his own name, and reaps the profit of the same."

Finally, the treaty now before the Senate is, in respect to the removal of Eastern Cherokees, a continuation of the uniform spirit and policy of every Cherokee treaty in existence, and of every act of Congress on the statute books of the United States for the last sixty years, down to the act of July 27, 1868, in which Congress directs in Sec. 3, that the Secretary of the Interior shall cause "the Commissioner of Indian Affairs to take the same supervisory charge of the Eastern or North Carolina Cherokees as of other tribes of Indians," which law cannot be executed without conflict of jurisdiction so long as they are citizens of that State, and remain within her borders. * * * * Moreover, from the evidence we can collect, we are fully assured that the delegation, whose protest we are noticing, do not represent even a respectable minority of the whole number of

North Carolina Cherokees, and if they represented the entire number, they would possess no more right to have their voice heard in regard to our treaty, they having denationalized themselves, than would any other citizens of the United States.

Very respectfully,

LEWIS DOWNING,
Principal Chief Cherokee Nation.

H. D. REESE,
WM. P. ADAIR,
SAMUEL SMITH,
ARCH. SCRAPER,
J. PORUM DAVIS,
Delegation from the Cherokee Nation.

No. 9.

Rejoinder of the North Carolina Cherokees,

Hon. N. G. TAYLOR,
Commissioner of Indian Affairs:

SIR: The delegation of North Carolina Cherokees have read, with no little surprise, what purports to be a reply of the western delegates to their communication to you of last summer, setting forth their right, as a part of the whole Cherokee people, to an equal ownership in the property of the Cherokee Nation.

We say we have read this communication with surprise, not alone because of the object sought to be accomplished, viz: to convince you that we have no such rights—rights which the western delegates themselves admit in conversation with their eastern brethren—but of the spirit of disregard of the truth of history and of correct principles in which it is written. The Cherokees of North Carolina do not accuse their brethren of the west of the authorship of this document, although it is printed over their signatures. They know that is none of theirs. It affords unmistakable internal evidence that it is the production of a professional hair-splitter, endued with much less candor and truthfulness than the "average Indian." Whilst its claim to notice arises from the fact of names of Cherokee delegates being appended to it, we shall not hold them responsible for its

misstatement of facts, its false conclusions, its selfish spirit, or its want of all kindly or brotherly feeling.

Mr. Commissioner: In the discussion of this matter, the Cherokees of North Carolina, speaking for themselves and for other Eastern Cherokees in like condition with themselves, are actuated by no unkind feelings toward their brethren of the west. They feel that the whole Cherokee people have been the victims of circumstances which they have been unable to control, and from which they have all suffered in different degrees, and that they have all been the subjects of wrongs, which can never be fully or entirely righted. What they seek now is not to inflict new wrong, but to so adjust matters as that the existing wrong shall bear more equally upon all, and so that they, the Eastern Cherokees, may not be utterly and forever crushed by bearing more than their proportionate share of the burden. For their brethren west they entertain none but the kindliest feelings, and their prayer is that that feeling may be everlasting.

With this feeling, Mr. Commissioner, we ask your indulgence for a brief rejoinder to this "reply."

One object had in view by us, in our statement of our case, was to show that from the first treaty made by the Government with the Cherokees, down to and including the treaty of 1846; the "Cherokee Indians," wherever located, were held to constitute *one indivisable nation*, owning, in common, all lands occupied by the Cherokee people. For the purpose of demonstrating this fact, we appealed to the treaties made between them and the Government, and quoted liberally from them. This appears to astonish the writer of the reply, but would not surprise a more intelligent disinterested reader. In proof of the existence of the fact stated, we might have gone still further back than 1817 in our quotions of treaties. The very first treaty made with them, that at Hopewell, in 1785, purports to be made with the representatives of "all the Cherokees." The treaty of 1791 purports to be made with "all the individuals composing the whole Cherokee Nation." This latter description is usually employed in all the subsequent treaties. The object of the employment of these words is evident. The Government and the Cherokees regarded the Cherokees as one nation, and the intent was to bind all by the treaty. The *only* treaty which does not purport to be made with the "whole

Cherokee people," *is that of* 1828, by which the western lands were first set apart for the "whole Cherokee people," with the intent to exchange them for the Cherokee lands east, an intention carried out by the treaty of 1835–6. The Cherokees of North Carolina, as a part of the Cherokee Nation, were held to be concluded and bound by the stipulations of *all* these treaties, that of 1835 included. By these treaties, thus made with the "whole Cherokee people," all the western lands were secured in exchange for land owned by the "whole Cherokee people" east of the Mississippi. Not an acre of it was secured in any other way, surprising and "dogmatical" as the fact may appear to the writer of the "reply." It was by a rigid adherence to this rule that treaties made with the Cherokee Nation bound all Cherokee people, that the Cherokees of North Carolina were dispossessed of their homes, though they were not directly represented in the treaty council, and never gave their sanction to the treaty, but to the last protested against its consummation. By adherence to this construction the Cherokees of North Carolina have been despoiled of their homes to pay for the lands west. Are they unreasonable in asking that the rule shall be adhered to now, when there is prospect of some slight indemnity to them by adhering to it?

In the statement of our case, after a reference to treaties, sufficient to demonstrate the correctness of our proposition, we asserted that the facts given rendered it clear that every acre of land held by Cherokees west was secured by an exchange for lands east of the Mississippi, the common property of the whole Cherokee people, the Cherokees of North Carolina included. This proposition the "reply" pronounces "absurd, unheard of, dogmatical." It is a much easier matter to apply startling expletives to a proposition than to refute it. This fact is very forcibly illustrated by the writer of the "reply," for although approaching the subject charged to the muzzle with loud sounding words, he utterly fails to show how else, than by an exchange, the Cherokees secured a single acre of that land. In his attempt to refute our proposition, he enters into a hypercritical examination of the treaties of 1817–19–28, and by a mustering of detached words and sentences of those treaties, he attempts to make it appear that there had at one time been a division of the lands of the nation, and that the land west had been secured, by an exchange, for the share of the lands of the first emigrants

west of the Mississippi, which lands said emigrants had secured by a cession to the Government of their portion of the eastern lands. We admit that if all the parties occupied the same positions now that that the occupied in 1817–19, there would be some force in the suggestion. But they do not. Since, there have intervened the treaties of 1828–35–46, and the effect of these has been to dissipate the idea which would be so convenient to the purposes of the "reply" at this time.

By an adroit quotation from the treaty of 1828, he seeks to show that the whole consideration for the Cherokee country west proceeded from the Arkansas Cherokees, and was the land occupied by them in Arkansas. At the risk of again astonishing the writer of the "reply," we assert, first, that the Arkansas Cherokees *were not* the exclusive owners of the Arkansas lands—and, second, that those lands were not the sole consideration for the lands set apart for the Cherokees west of Arkansas. In support of the first proposition, we quote here the 4th article of the treaty of 1846. It is all that need be said in answer to the sophistical reasoning of the "reply."

ARTICLE IV.

And whereas it has been decided by the board of commismissioners recently appointed by the President of the United States to examine and adjust the claims and difficulties existing against and between the Cherokee people and the United States, as well as between the Cherokees themselves, that under the provisions of the treaty of 1828, as well as in conformity with the generel policy of the United States in relation to the Indian tribes, and the Cherokee Nation in particular, that portion of the Cherokee people known as the "Old Setters, or "Western Cherokees," had no exclusive title to the territory ceded in that treaty, but that the same was intended for the use of, and to be the home for, the whole Nation, including as well that portion then east, as that portion then west of the Mississippi; and whereas the said Board of Commissioners further decide that inasmuch as the Territory before mentioned became the common property of the whole Cherokee Nation by the operation of the treaty of 1828, the Cherokees then west of the Mississippi, by the equitable operation of the same treaty acquired a common interest in the lands occupied by the Cherokees east of the Mississippi river, as well as in those occupied by themselves west of that river, which interest-

should have been provided for in the treaty of 1835, but which was not, except in so far as they, as a constituent portion of the Nation, retained, in proportion to their numbers, a common interest in the country west of the Mississippi, and in the general funds of the Nation; and therefore they have an equitable claim upon the United States for the value of that interest, whatever it may be. Now, in order to ascertain the value of that interest, it is agreed that the following principle shall be adopted, viz: all the investments and expenditures which are properly chargeable upon the sums granted in the treaty of 1835, amounting in the whole to five millions six hundred thousand dollars (which investments and expenditures are particularly enumerated in the 15th article of the treaty of 1835) to be first deducted from said aggregate sum, thus ascertaining the residum or amount which would, under such marshalling of accounts, be left for *per capita* distribution among the Cherokees emigrating under the treaty of 1835, including all extravagnt and improper expenditures, and then allow to the Old Settlers (or Western Cherokees) a sum equal to one-third part of said residum, to be distributed *per capita* to each each individual of said party of "Old Settlers," or "Western Cherokees." It is further agreed that so far as the Western Cherokees are concerned, in estimating the expense of removal and subsistence of an Eastern Cherokee, to be charged to the aggregate fund of five million six hundred thousand dollars above mentioned, the sums for removal and subsistence stipulated in the 8th article of the treaty of 1835, as commutation money in those cases in which the parties entitled to it removed themselves, shall be adopted. And as it affects the settlement with the Western Cherokees, there shall be no deduction from the fund before mentioned, in consideration of any payment which may hereafter be made out of said fund; and it is hereby further understood and agreed, that the principle above defined shall embrace all those Cherokees west of the Mississippi, who emigrated prior to the treaty of 1835.

In consideration of the foregoing stipulation on the part of the United States, the "Western Cherokees" or "Old Settlers" hereby release and quit claim to the United States all right, title, interest, or claim they may have to a common property in the Cherokee lands east of the Mississippi river, and to exclusive ownership to the lands ceded to them

by the treaty of 1833 west of the Mississippi, including the outlet west, consenting and agreeing that the said lands, together with the eight hundred thousand acres ceded to the Cherokees by the treaty of 1835, shall be and remain the common property of the whole Cherokee people, themselves included.

This article of the treaty was not necessary to establish the fact that the Arkansas Cherokees were not the seperate and exclusive owners of the Arkansas or any other Cherokee lands. That fact had been ascertained and declared by a competent umpire before the treaty of 1846 was entered into. The treaty of 1846 is the acquiescence of all parties in the ascertained condition of affairs. The attempt to revive, at this day, the old and exploded claim of the Arkansas Cherokees is to say the least of it, extraordinary.

2d. The consideration for the Cherokee country was not solely the Cherokee lands of Arkansas. What else entered into the consideration we shall show presently.

Prior to the treaty of 1828 the Government had undertaken, with the State of Georgia, to extinguish the Indians title to lands within her limits, and to remove the Indians from her borders. Prior to this treaty, also, collision had occurred between the Cherokees who had gone to Arkansas and the squatters who desired to settle upon their lands. In view of this undertaking with Georgia and the collisions occurring between the settlers and the Cherokees in Georgia, Alabama, Tennessee, and Arkansas, the government had determined to set apart a country beyond the limits of organized States and Territories, which, in the words of the treaty, was to be "a permanent home" for the whole Cherokee people. The treaty of 1828 was the first step towards the accomplishemnt of that end. By it the Government takes back the two or three million acres which had been ceded in Arkansas, and set apart for the use and benefit of the nation, the eighteen to twenty millions since known as the Cherokee country. The Government received "consideration" for the land set apart. What was it? 1st. The Arkansas lands; and 2d. The ten to twelve millions of acres still owned by the Cherokee people, east of the Mississippi; and for the tracts thus exchanged, the Government agreed to pay five million of dollars difference. Unquestionably it was the desire of the Government that all the Cherokee people should be transferred to the new territory west of the

Mississippi, and to secure their voluntary removal to it, the Government offered to such as should emigrate liberal rewards. But we look in vain to the treaty of 1828, or to any other treaty, for penalties or forfeitures against those who did not choose to accept the offers. That is an invention of a later day, and is not a requirement of the Government.

Says the "reply," "the only lands acquired under this treaty, (1835,) were the 800,000 acres, known since as the 'neutral lands' in Kansas. These were purchased by the Cherokee nation east, and conveyed to the Cherokee nation west." This is an erroneous statement of the case either intentional or otherwise. (No such transaction ever took place, nor in the whole history of the Cherokees have there been known such things as "Cherokee nations west," or Cherokee Nations east.") But is it true, that there were no lands acquired by the treaty of 1835? We do not so understand it, but we do know that the point is not essential. The treaty of 1836 is but a sequence of the treaty of 1828, and the two are to be construed together. By the treaty of 1835, the lands set apart by the treaty of 1828 are confirmed to the Cherokee people, and this confirmation, and the five millions of dollars, together with the Arkansas lands, is the full consideration for the lands of the Cherokees east.

In due course, the "reply" approaches the consideration of the 12th article of the treaty of 1835. Very much space is devoted to an effort to demonstrate that the construction which has been given to the 1st paragraph of that article for the last thirty years is "erroneous."

To accomplish this object, it is necessary to overthrow the decisions of every Secretary of War, every Secretary of the Interior, every Secretary of the Treasury, every Attorney General, every Commissioner of Indian Affairs, every Auditor and Comptroller, every committee of Congress, every Senate and House of Representatives that have passed upon this question since 1836. To some men this would appear a formidable task, but to the gentleman who writes this reply, it seems an easy undertaking.

Every government officer whose duty has required him to examine the question of the relative rights of the individuals composing the Cherokee Nation, have held that, so far as moneys raising from the sale of the national domain (the common property of all the people of the Cherokee Nation) were concerned, their rights were precisely the

same, no matter upon which side of the Mississippi they resided. In our former communication we laid before your honor all the rulings and decisions upon this point that we regarded as essential to our claim: notwithstanding this formidable attack, we do not withdraw them. If they can answer no other purpose, they can at least show you what simpletons have heretofore had the management of public affairs, and how fortunate it is that, even at this late day, the departments of the Government who are to pass upon the question at issue should have the benefit of the superior intelligence and legal research of the astute gentleman who writes this "reply."

The writer of the "reply" not only corrects the "erroneous construction" which has prevailed during the past thirty years of the 12th article, but he also volunteers to tell your honor just what the true reading of the article is. To him the subject presents no difficulties. His judgment is most emphatic. It is, that Cherokees of North Carolina have no rights which the Western Cherokees, or any body else, are bound by treaty stipulations to respect. That the condition precedent to their participating in the beneficial provisions of the treaties made since 1828 is their removal to the west.

This would be an alarming suggestion, if it were not for one circumstance, namely, the fact that *it is not true*. If there is any one fact that ought to be regarded as settled, it is that no such condition has ever existed, and does not now exist. By the 12th article of the treaty of 1835, the choice to remove or remain is distinctly left to the individuals. There are no penalties, punishments, or forfeitures denounced against those who should elect to remain. Whilst the treaty was pending for consideration, this idea was started by those desirous of swelling the number of emigrants. It was met and denied then by an agreement, or an explanation and construction of its provisions, signed by the delegates who signed the treaty on the one part, and by the agent or attorney of those who did not expect to remove on the other. This agreement or mutual understanding of the treaty, is so clear and distinct that we beg leave to reproduce it here:

WASHINGTON CITY, *May* 26, 1836.

Whereas, William H. Thomas, authorized by a portion of the Cherokee citizens of and residing in the State of North

Carolina to attend at this place for them, examine, and (if equal and unconditional rights were secured to them) sign a treaty made and concluded at New Echota, on the 29th of December, 1835, between the United States of America and the Cherokee Nation of Indians, he, arriving here after it was submitted to the Senate for ratification, could have no opportunity of examining its provisions, and of obtaining supplemental articles thereto, had any been necessary, to secure to the Indians above mentioned an equal share, proportioned to their numbers, of the proceeds of the sale without a new negotiation, and that, it was believed, would delay the ratification, and provent the supplies being furnished in time to relieve the wants of the poor class of Cherokees; also, being of the opinion that the undersigned delegation had the right, and were disposed to do equal and impartial justice to all their people; that the powers conferred on the President and Congress of the United States to manage their affairs were intended tor that purpose and no other; further, that the articles mentioned below, intended to prevent improper constructions, would be faithfully complied with, gave his assent to and assisted in obtaining the ratification of said treaty.

The delegation whose names are hereunto annexed, for the Cherokees who have emigrated to and are expected to emigrate to their new homes west of the Mississippi, of the first part, and William H. Thomas, for the Cherokees belonging to, or which shall belong to, the following towns and settlements; Qualla, Alarka, Aquorra, Stokoih, Cheeoih, and their respective settlements, expected to remain east, of the second part.

Article I.

It is admitted that the said Cherokees are entitled to an equal share, proportioned to their numbers, in all the lands belonging to the Cherokee Nation of Indians, and notwithstanding they have been deprived of their share of the annuities since the year of 1820, are, nevertheless, entitled to all sums in the possession of the President of the United States for the use of, and annuities due from the United States to the Cherokee Nation of Indians, (except such as belong exclusively to the Cherokees now living west of the Mississippi,) their proportionate share of which benefits was intended to be secured to them by the 12th article of the New

Echota treaty, which reads as follows: "Those individuals and families of the Cherokee Nation that are averse to a removal to the Cherokee country west of the Mississippi, and are desirous of becoming citizens of the States where they reside, and such as are qualified to take care of themselves and property, shall be entitled to receive their due proportion of all the personal benefits accruing under this treaty for their claims, improvements, and *per capita*, as soon as an appropriation is made for this treaty." The qualification, therein required, referred to the pre-emption privilege, which could not be allowed of, being inconsistent with the prior rights of the States.

Also believing it the interest of those desiring to remain, as provided for in the above article, to purchase their lands, procure fee simple titles thereto, and be the acknowledged owners of their soil, (to them so dear,) protected by the laws of the States.

ARTICLE II.

That the number belonging to said towns and settlements be accurately ascertained, two and that acting justices of the peace, in and for the counties in which they reside, shall annually take their census, make out and certify a list, showing the number of each town, which list shall be certified by the clerk and chairman of the county court; agreeable thereto, the President or agent of the United States is requested to pay them their proportionate share of all sums arising from the transfer or sale of the common property, as mentioned in the first article.

ARTICLE III.

It is further agreed that, if any construction be given to any of the articles of the said New Echota treaty, whereby the Cherokees belonging to, or which shall belong to, said towns and settlements, shall be deprived of an equal share, proportioned to their numbers, of all sums arising from a sale or transfer of the common property mentioned in the first article of this agreement, payable to the Cherokee Nation of Indians or people, we will request the President and Senate of the United States, and they are hereby requested to allow them such supplemental articles thereto as shall remove such improper constructions and enable them to receive their equal proportioned share as above mentioned.

Article IV.

It is further agreed, that one claim to which said Cherokees desiring to remain are entitled, by the 12th article of the New Echota treaty, amounting to $53.33 each, intended to place them on terms of equality with those that chose to emigrate in two years from the ratification of the above-named treaty, who are allowed that sum for removal and subsistence, out of the moneys arising from the sale of the common property, shall be placed by them on interest in the State Bank of North Carolina, or some other safe institution, to furnish those desiring to emigrate to their new homes in the west, with removal and subsistence.

Article V.

The said Cherokees, belonging to said towns and settlements, are to have the use of the hunting ground, adjoining to where they live, reserved to the Cherokee Nation by the 7th article of the treaty made at Philadelphia, on the 2d of July, 1791.

Article VI.

The Cherokees above mentioned, being desirous to have the translation of the Bible and Testament completed in their own language, for that purpose they agree to pay to such person or persons as may be employed for the same, the sum of five hundred dollars; also, after the translation is completed, for books, five hundred dollars more, to be paid on receiving them.

Article VII.

Should a division of the lands west of the Mississippi, belonging to the Cherokee Nation as a common property, take place, the above Cherokees shall be entitled to their share to be laid off for them.

Witness our hand and seal,

W. H. THOMAS, for N. C. Cherokees,
MAJOR RIDGE, his ✕ mark,
JAMES FOSTER, his ✕ mark,
WILLIAM ROGERS,
JOHNSON ROGERS,
ELIAS BOUDINOT,

JOHN SMITH, his ⋊ mark, } Arkansas Chiefs,
JAMES ROGERS, }
JOHN GUNTER,
ANDREW ROSS,
GEORGE WELSH, his ⋊ mark,
LONG SHELL, his ⋊ mark,
JOHN FIELDS, his ⋊ mark,
JAMES FIELDS, his ⋊ mark,
S. WATIE,
JOS. A. FOREMAN,
JAMES STARN, his ⋊ mark.

Interpreted by me, S. WATIE,
Attest: JAMES A FOREMAN,

It is sought to impair the force of this instrument by the assertion, that it is no part of the treaty. Technically this is true; yet it is a contract signed by the delegates, who signed the treaty, and possesses *as much moral force* as if it were a part of the treaty. The delegates now here, representing the Cherokees of the West, are the lineal descendants as well as the political successors of the men who signed this agreement, and we call upon them to redeem the pledge of their fathers, by joining with us in requesting the proper authorities to secure to us, in proportion to our numbers, an equal share of all sums arising from the sales or transfers of the common property belonging to all the Cherokee Indians. We submit that they cannot refuse us this request without dishonoring their fathers, and bringing shame and disgrace opon the Cherokee name.

Before any steps were taken in the execution of the treaty of 1835, this agreement was filed in the office of the Commissioner of Indian Affairs, with a request that he would advise those interested of his construction of the treaty. His response was, in effect, that the agreement of the delegates gave the true meaning and intent of the treaty, and it has so been held by every executive officer and Congress from that time to this. Repeated efforts have been made to secure a reversal of this ruling, and a decision which would cut off the Eastern Cherokees from all participation in the common property of the nation. Whilst the treaty of 1846 was under consideration, a most determined effort of this kind was made, with what result may be seen by reference to the treaty. This attempt was renewed in Congress, when

the appropriation to carry out the treaty was under consideration, but without success. During the past thirty years there have been at least twenty distinct decisions sustaining the rights of all Cherokees to an equal share in all the property of the Cherokee Nation, and not a single one to the effect that the Eastern Cherokees had lost or forfeited those rights by not emigrating, or that they could lose them in that way.

Are we not justified, then, in saying that this question is settled.

The writer of this "reply" thinks this agreement is void, because it is not signed exclusively by the old "Western" or "Arkansas chief." If this is so, the treaty of 1835 is void for the same reason. He says the instrument has also affixed to it "the name of James Starr as an Arkansas chief," and that no person of that name ever was an Arkansas chief. A little closer reading would do no harm. We have not so described James Starn. His assertion that no person was ever authorized to sign such an agreement by the Western Cherokees, can go for what it is worth—very little, we should think, after the lapse of thirty years.

The reply says: "The first aricle of the treaty relates exclusively to a patent of the Cherokee lands.

Is this so? The first portion of the first sentence of that treaty is in these words:

"Art. I. That the lands now held and occupied by the Cherokee Nation, shall be secured to the *whole Cherokee people,* for their common use and benefit." We submit, that the intent of these words is to indicate that that portion of the Cherokees regarded by the Government as the "nation," or ruling party, were simply trustees for the "whole Cherokee people." This language was intended to qualify, and does qualify, the patent provided for. The land is only for the "benefit" use and of the whole Cherokee people. If any portion of it is sold, the proceeds must be used for the benefit of the "whole Cherokee people." No special division of the Cherokees can claim an exclusive occupancy of the land; no special division of them can claim the entire proceeds arising from a sale of the whole or a portion of it. At the time this treaty was under consideration, as we have said, an effort was made to cut off the Eastern Cherokees. The result was the adoption of the forth and the tenth articles, by which it was "expressly agreed that nothing in the

treaty should be so construed as in any manner to take away or abridge any rights which the Cherokees remaining in the States east of the Mississippi had, or may have under the treaty of 1835, or the supplement thereto."

The "reply" admits that the North Carolina Cherokees were rightfully paid their proportion of the money remaining of the five million fund. This was done in 1851, some sixteen years after the ratification of the treaty, and this, too, notwithstanding they had not emigrated, and after they had, as claimed, forfeited their rights by becoming "citizens." Fifty-three dollars, *per capita*, has also been appropriated by Congress, and ordered to be paid them so soon as the State of North Carolina, by her Legislature, should give her consent for them to reside within her limits, which the State has done. Why has this been done? Why has any money been paid those who did not emigrate; and especially why have they been ordered to be paid money intended to be applied in their removal, when it was known that they did not intend to use it in removal? The answer is a very simple one. It was because it was their proportion of money derived from the sale of the common property and belonged to them.

If this is true, and it cannot be gainsaid, is it not equally true that the Cherokees of North Carolina are entitled to their share of any money derived from any further sales of the common property?

Stripped of all garnishment and reduced to their simple elements, what were the treaties of 1828 and 1835? They were an exchange of lands between the Government and the Cherokee people, and the payment of five millions of dollars by the Government, as the difference between the two tracts. (The Cherokee lands were held in common by the Cherokee people,) and the boot money was divided equally among them. (The land acquired by the Cherokees was acquired as the common property of all, and is so held to-day.) If disposed of, in whole or in part, the proceeds must be applied to the common use and benefit of all its owners. No proposition could be more plain or simple.

At the time this land was set apart by the Government for the purpose of exchange with the Cherokees, the quantity contained in the tract was not well understood, indeed it is not known with entire accuracy to day. It was then supposed that the whole of it was necessary for the accom-

modation of the Cherokees who should emigrate. Its quantity is now estimated at near twenty million acres. The lands then held by the Cherokees east of the Mississippi was estimated to contain about ten million acres. The Senate, to whom the question was refered, decided that the money difference between the two tracts was five million dollars, and this was the sum agreed to be paid by the treaty of 1835. About the time the transaction was being closed, a fear was felt that the quantity of land west was insufficient for the number of Cherokees who would remove to it. To supply this supposed deficit, eight hundred thousand acres more was ceded to the Cherokees, and to pay for it five hundred thousand dollars were deducted from the "boot money," reducing to that extent the money to be divided among the common owners. Had the quantity of western land been *less*, the amount of money difference would undoubtedly have been found *greater* by the Senate, and had not the 800,000 acres been ceded, the amount to be paid out *per capita* would have been that much greater.

Experience has shown the fact that the amount of lands conveyed to the Cherokees was far in excess of their needs. The extent of that excess is shown by a treaty now pending before the Senate for its re-cession to the Government to be nearly fourteen million acres. Just in proportion to this excess have the Cherokees east "per capita" been wrongfully kept out of their just proportion of the common property of the nation.

We admit, that whilst the national property remained in lands, held in common, we could not ask to have set off to us our portion of it, and we have not asked to have it done. But now, that the changed condition of the country, and sound policy requires the convertion of this surplus land into money, we are no longer restrained from asserting our well settled rights, and asking *that justice*, so long withheld, shall be done us.

Justice, in its simplest form, consists in paying to us, the Cherokees east of the Mississippi, *per capita*, our just proportion of the moneys arising from the sales of any portion of the common property of the "whole Cherokee people."

More even, exact justice requires the transferring to us of our proportion of the invested funds of the nation.

These funds were derived from the sales of the common property of the "whole Cherokee people," and were designed for the promotion of education and civilization among the Cherokees, and for the relief of the orphans and the poor. For these purposes they are needed as much east as west of the Mississippi, and in common fairness, they should be divided.

The "reply" avers that a former attorney of the Cherokees, in some argument, "admitted away" our rights in these funds. In nothing quoted, however, does any such "admission" appear, and if it did, we submit, Mr. Commissioner, that treaty rights cannot be disposed of in that way.

Another dodge of the "reply," to get rid of our just demands is, that we have become citizens, and have thereby forfeited the rights vested in us by treaty stipulations. He attempts to make this appear by reference to the pleadings of one J. K. Rogers in the Court of Claims, and a remark of one of the judges, not warranted by anything that appears in the record. All we have to say is, that Rogers was never the attorney of "2133," or any other number of Eastern Cherokees, and was never authorized to appear for them in court or elsewhere. We are not *citizens of North Carolina in any other sense than as "residents" of the State.* In none of the courts of the State can we appear as parties or as witnesses; we are denied all civil and political rights, simply because we are Indians. If that constitutes us "*citizens of North Carolina*," why then are we citizens. But does it follow that citizenship takes from us rights secured by treaty? You can answer this question, Mr. Commisioner, for either common sense, justice, or law.

The writer of the "reply" assumes the ground that the Eastern Cherokees have no rights in the national lands, or the moneys arising from the sale of the nation's lands, for the reason, as he asserts, that the Eastern Cherokees, by virtue of the permissions of the treaty of 1817, received reservations of 640 acres as an offsett, or in lieu of their interest in the common property. This doctrine, though only found in the "reply," we will notice for a moment.

The evident origin of the granting to certain persons reservations, (as they were granted to only a special portion of the Cherokees remaining east,) was to appease the strong protestations of a part of the people to the treaty in conse-

quence of breaking up their homes, and as special favors were being offered to those going west, assent was given to this special grant to those remaining.

The author of the "reply," offers as a reason that these reservations were in lieu, that on their removal west it reverted to the United States, thereby claiming that to be a recipient of the western lands, they must move west and give up the lands in reservation to the Government.

This would be quite a plausible view if it were only based upon the facts. But it is not. In the first place, the reservee has only a life estate, subject to his control. In the second place, the courts have decided, and so has the law officer of the Government, that no act of the reservee could void the rights of the "heirs and widows," whose vested, the moment the reservation was located and possessed by the reserveer, and could not be defeated by any subsequent act of his.

3d. That the reservations, which could be taken only by those who were "heads of families" and whose homes were located on the territory ceded by the treaty, which was but a small portion of the number remaining east.

4th. That the reservations were forcibly taken from them by virtue of the treaty of 1835, which treaty was not made or voluntarily assented to by the Cherokees now east, but was made by those Cherokees then east, but now west.

5th. That the larger part of the reservees, and their heirs, who voluntarily entered into the treaty of 1835, and those who have since voluntarily removed west, have: 1st, received their *per capita* of the five million dollars; 2d, their share of all national funds; 3d, the joint occupancy of the nation's lands; 4th, are now the common claimants of the entire proceeds of the sale of the lands of this people.

6th. The widows and heirs of those reservees who removed west (and who are the major part of the representatives of reservation claims) have been and are making their claims to reservations the same as if they had remained east, as they have an undoubted right to do. And more than this: in many cases the heirs of the same reservation are part east and part west. And will the writer of the reply contend that the heirs west have forfeited their rights by removal, that a partition of the reservation must be made in accordance with the heirs east or west? Or would he claim the more probable result, if, his premises are true, that

the whole reservation is a forfeiture and reversion? Certainly he will not become so liberal, or so violate the rules of heirship, as to pretend that the western heirs have forfeited, for the benefit and gain of the eastern heirs.

Thus it will be seen that the reservations were only allowed to a few of a certain class, and on this class was it, in no way, a condition of release of rights in the national domain or the proceeds thereof, and that the greater part of the beneficiaries of said special permit are now of the west and the very ones who conceded the authority of forcibly taking away said reservations and are of those now claiming the benefits as heirs, and *all* the national funds, and deny us our proportion.

As we look at it from the stand-point of the treaty and facts, it was not the intent nor condition of treaty, nor the possible source of justice. If so, will the writer tell us where those who did not take reservations (the larger part of those remaining east) should receive their domain, or will he claim, that he has dedicated all his rights to the western portion of this people.

"Will the writer of the "reply" contend that the Cherokees were so stupid, or those west, and to remain west, so unjust, or the Government of the United States so oppressive as to create an instrument, that should compel one portion of a family (for that was always the basis of the Cherokee Nation) to give up all sources of education, and of aid to its orphans and poor, for the exclusive benefit of the other portion of the same family, or force away the homes of one portion to pay for homes of the other in another locality? and yet allow those newly purchased homes to be sold, converted into money and spent irrespective of all the purchasing party? No, Mr. Commissioner, we will not for a moment thrust such ignorance upon you or attribute such injustice to our western brethren, or such oppression to any act of which the United States is a party.

As to the writer asserting that the delegation is without authority, we simply say that we are only responsible to you and our people on that point, both of which, so far as we know, are satisfied.

THE PENDING TREATY.

Since our communication to you which has produced this "reply," we have been furnished with a copy of a treaty signed by yourself, in behalf of the Government, and the delegates of the Cherokees west, on behalf of that portion of our people.

Although this document is marked "confidential," we hope we will be excused for offering a few remarks upon it, as it effects most vitally our personal interests, and the interests of those whom we represent.

At the time this treaty was being negotiated, the delegates of our people were here in the city, and were assured, again and again, that they should have an opportunity of examining the treaty before its conclusion, and of suggesting such provisions or changes as they might think requisite to secure the existing rights of Eastern Cherokees. These promises were accompanied by what was taken to be earnest respect for the rights of Eastern Cherokees, and warm professions of fraternal regard. The treaty, however, was concluded and sent to the Senate without its being seen by our delegates, and without any knowledge on our part as to its stipulations, beyond vague and general assurances, that "it was all right," and that our interests were carefully guarded. Judge, then, Mr. Commissioner, of our surprise, when a copy of this treaty is placed in our hands, by a friend, to find that, instead of being what our brethren represented, it was an instrument intended to take from us our just rights, and to mock us with an offer of partial restitution, on terms not required by the treaty of 1835, and to which we cannot consent.

The objects of the treaty, as set forth in the preamble, is to clear the treaty of 1866 of "ambiguities," to abolish "party distinctions," and to establish "harmony," among Western Cherokees. These are commendable objects, and have often been secured by treaties by our western brethren, and necessity, doubtless, exists for their being so secured again.

The *real* object of the treaty, however, is the re-cession to the Government of thirteen million acres of the land received in exchange for the Cherokee lands east of the Mississippi, by the treaties of 1828–33–35, for which the

Government proposes to pay the sum of $3,500,000, and the 800,000 acres of Kansas lands, for which the Government proposes to refund the $500,000 paid under the treaty of 1835, with interest at five per cent, making a sum equal to $1,325,000, or a total sum of $4,825,000.

These lands proposed to be reeeded, are the very lands to pay for which the lands of Eastern Cherokees—our own included—were taken in 1835.

These are the very lands in "the personal benefits" of which we are declared to have a *per capita* interest by the 12th article of the treaty of 1835. and the nett proceeds of which, according to the 15th article of the same treaty (as explained and modified by the 4th article of the treaty of 1846.) were to be "equally divided among all the people of the Cherokee Nation."

These are the very lands which the Western delegates admitted, by solemn covenant, to belong to the North Carolina Indians in "equal shares proportioned to their numbers" and from the proceeds of the sales of which they requested the proper authorities to pay us our proportionate share.

(These are the very lands the title to which is vested in the Cherokee nation, for the use and benefit of the "*whole Cherokee people,*" by the treaty of 1846.)

These are the very lands the right to the proceeds of the sales of which are sanctified to us by thirty three years of sacrifice, wrong, suffering and want.

These are the lands for which the houses of our fathers ourselves, and our children, were taken thirty-three years ago, and for the sale of which, (as they were useless to our western brethren,) we have waited through a long life time of deprivation.

These are the lands, a just proportion of the proceeds of the sales of which, are guaranteed to us by the solemn stipulations of treaty and of covenant.

And yet. Mr. Commissioner, these lands are sold by the pending treaty, *and the entire proceeds appropriated*—not "to the use and benefit" of their owners—the whole Cherokee people—but *to the use and benefit* of that *portion of the Cherokees residing west of the Mississippi river.*

Mr. Commissioner: We will not characterize this attempt of our brethren as it seems to us it might, with much justice,

be characterized. We will content ourselves with simply saying THIS THING OUGHT NOT TO BE DONE.

We have an equal interest with our brethren in this land, because we have paid an equal price with them for it, and they have had an exclusive enjoyment of it for the past thirty years.

It ought not to be done because it is WRONG—the wrong of robbing one man to enrich another; and though both be of the same household, the wrong is not thereby sanctified.

We should rejoice to see our Western brethren rich, great, and prosperous, but we trust they do not aspire to become so by any avaricious grasping of what does not belong to them, or by appropriating to themselves that which rightfully belongs to others; even though those others "have Cherokee blood in their veins."

We are confident, Mr. Commissioner, that had your attention been attracted to this question as strongly in July as we hope it is now, you would not have appended your signature to this treaty without material changes. We trust now that you will use your influence with the Senate to prevent its ratification in its present form.

Although this is the most flagrant, it is not the only wrong of this treaty.

By the treaty, provision is made for terminating the common ownership of the land remaining, surveying and patenting it in severalty to the same division of the nation to whom the money is to go. This would give to each Western Cherokee about five hundred acres. We make the same objection to this disposition of the common property that we do to the division of the money. It is unjust. Whenever the land is divided, we claim our share of it as a "personal benefit" secured by the treaties of 1835 and 1846.

By its "claims commissioners," the treaty proposes to take jurisdiction of all claims of all individual Cherokees against the Government. If this is intended to take charge of the private claims of Eastern Cherokees, we object to it. We prefer taking care of our own business, or at least having a supervising care, by representation.

By the 15th article of the proposed treaty, Eastern Cherokees are given three years' within which they are allowed to settle in the Cherokee country, and enjoy the rights guaranteed to them by former treaty stipulations; failing to

make settlement within that time, they are barred. We submit, that so long as the land is held as the common property of the whole Cherokee people, such a rule can only be enforced in violation of the former treaty stipulations. In the name of our people who propose hereafter to make the territory their homes, we protest against the adoption of any such provision. In view of the party spirit which has always prevailed in the territory, we do not regard the prospective relief and justice, held out by an appeal to the "Legislative Council," as preferable to present treaty guaranty.

To this article is appended a proviso, which, in view of the manifest objects of the treaty, is a curiosity. It is in these words: *Provided*, That nothing in this treaty shall be so construed as to abrogate or impair any right or rights now possessed or claimed by said Eastern Cherokees, or any of them, under former treaties." And then to this proviso is added this: "*Provided, however*, That nothing herein shall be construed as an acknowledgment of any right or the validity of any claim of said Cherokees against the Cherokee Nation." We submit, that this is a species of diplomatic juggling well calculated, if not intended, to mislead and confuse, and if ratified in this shape, must lead to endless contest, wrangling, and litigation. The main object and intent of this treaty is to cut off the Eastern Cherokees, and to divide the proceeds of the sales of the lands among the Western people. Yet here is a proviso which says, the manifest intent shall fail.

Do you say that we ought not to object to this; that at least it leaves us just where we were? We do not think so. We are the weak party in this case, and we fear that the *intent* of the instrument and not the *proviso* will prevail. This treaty ratified, and our rights are all suspended upon a slender thread. We appeal to you not to leave us in that condition. Let this treaty be so amended as to place our just rights upon a sure foundation—the foundation of 1846—or let it be altogether rejected.

CONCLUSION.

In the former presentation of our case, in July last, we did not seek, particularly, to present our views upon the subject matter in controversy, but rather to call your atten-

tion to the opinions and decisions of those high in authority in the different Departments of the Government, and who had from time to time severally considered the question at issue, viz: *That the Eastern Cherokees had an equal right with the Western Cherokees, as a part of the "whole Cherokee people," to participate in the benefits accruing from the treaty of* 1835, *and prior treaties, and that the removal of the Eastern Cherokees to the country west of the Mississippi was not a condition precedent to the enjoyment of such benefits.* Our reference to, and quotations of treaty stipulations, as also decisions of the different co-ordinate branches of the Government, uniformly in our favor, we deem more potent in sustaining our cause than any other line of argument we might pursue, and the "reply" fails entirely to refute, in the least degree, the propositions so plainly and concisely settled by these official records, to which we again especially call your attention, and upon which we are content to rest our cause.

For more than a quarter of a century has this "hitherto unheard of claim" been urged by the Eastern Cherokees upon the attention of the Government to whom we have confided our destiny. Repeatedly have we made the demand for the fulfilment of treaty obligations, and with an abiding faith and confidence in the guardian of our interest we have never doubted that in the ultimate and final result that justice, so long delayed, would be meted out to us.

It has been our misfortune that we were a minority of the "whole Cherokee people," and by distance separated far from the greater number, who assume to control and direct the affairs of the Cherokee Nation exclusively in their own interest. During the late war—but from no fault of ours—we were cut off from communicating with your department, deprived of the protection of the Government, and subjected to all the vicissitudes incident to the conflict. Yet our allegiance to the Government during its hour of trial was unfaltering, and our confidence in its protection unshaken. Then, what was our surprise, when an opportunity was again afforded us to resume correspondence with your department, to learn that an attempt was being made by the Western Cherokees, in the treaty of 1866 and the treaty now pending before the United States Senate, to administer up the estate and inheritance of our people, for the benefit of the Cherokees West. And this too without even in the least degree consulting us in the premises. Against this

wrong do we earnestly protest, and appeal through your department for simple and exact justice at the hands of that Government which is the common guardian of the Indians.

It is no unreasonable demand that we ask that the Cherokee treaty now pending for ratification by the Senate shall be so amended as to clearly and unequivocally recognize and reaffirm the rights and interests which were solemnly guarantied to us by former agreement and treaty stipulations.

The Western Cherokees, while denying our right to participate in the benefits of the "whole Cherokee people," attempt to make an exhibit of exceeding generosity by proposing that if we will abandon our homes and the graves of our fathers, and remove to the West, we shall be permitted to enjoy with them the rights of citizens of the Cherokee Nation. And why then tell us if we do not accept this *grace* within a specified time, we shall be forever barred, and furthermore, that if we "much longer remain East, we shall forfeit the $53.33 1-3 *per capita* provided for our removal and subsistence." To this arrangement and dictum on the part of the Western Cherokees we cannot submit. We are not begging gratuities, and ask nothing as favors. We simply demand our rights as solemnly guaranteed to us, and nothing more. And with an abiding faith that the Government will interfere to redress our wrongs, we rest our case.

JAMES G. BLUNT,
Attorney for Eastern Cherokees.

Read and approved.

JACKSON BLYTHE,
TAH-QUAH-TE-HEH,
WILLIAM McLAMORE,
HENRY SMITH,
Delegates of Eastern Cherokees.

Attest:

JAMES TAYLOR, *Secretary.*
HENRY SMITH, *Interpreter.*

WASHINGTON, D. C., *February* 10, 1869.

No. 10.

Letter of delegation from Cherokee Nation in reply to rejoinder of the North Carolina Cherokees.

WASHINGTON, D. C., *February* 12, 1869.

HON. N. G. TAYLOR,

Commissioner of Indian Affairs:

SIR: During the summer of last year the North Carolina Cherokees, through their attorney, James G. Blunt, addressed you a pamphlet, setting up their pretensions to a participation in all the property of the Cherokee Nation.

On the 19th of January last, in a communication which we had the honor to make to your office in reply, we demonstrated, by citation of treaties and other official documents, that those pretensions were as unsubstantial as the "baseless fabric of a vision." We believe that said Cherokees and their atterney are now somewhat "disillusionated," for in a pamphlet of twenty-five pages, just handed us, they give satisfactory evidence of "awakening from their dream." They still, however, rest under some hallicination in regard to their supposed *status* and rights; and while, as in courtesy bound, we now acknowledge the receipt of their pamphlet, we avail ourselves of the occasion to say a few words for the purpose of dispelling the still remaining "mists of dreamland," which confuse them.

General Blunt is pleased to characterize our plain statement of facts as the work of a "professional hair-splitter." Had he possessed a little more legal knowledge he would have avoided the ludicrous mistake of styling his pamphlet a "Rejoinder," instead of a "Replication"—a mistake which not even a tyro in the law ought to have made. (See Stephens, Gould, and other works on pleading.)

The attorney (so called) for the North Carolina Cherokees asserts that "from the first treaty made by the Government "with the Cherokees down to and including that of 1846, the Cherokee Indians, wherever located, were held to constitute one indivisible nation, owing in common all lands occupied by the Cherokee people, and that the only treaty which does not purport to be made with the whole Cherokee people is that of 1828, by which the western lands were first set apart for the whole Cherokee people, with

the *intent* to exchange them for the Cherokee lands east—an intention carried out by the treaty of 1835–6." We have already shown that this is not so, in point of fact, by quoting the treaties; but General Blunt having said "the horse is seventeen *feet* high means to stick to it."

His fidelity to the goddess of "historical truth," whose champion he professes to be, cannot be better illustrated than by showing how veracious he is when he makes the above assertion as to the parties between whom the treaties were made.

In the first place, the treaty of 1819, article 6, (7 Statutes at Large, p. 197,) drew a plain line of demarcation between the Cherokees east and the Cherokees west, severed the Cherokee Nation into two distinct parts, and assigned to each a certain portion of the national annuities—to the Cherokees east two-thirds, and to the Cherokees west one-third thereof.

Then come the treaties of 1828, 1833, and 1835.

1. The treaty of 1828 was made between the United States and the CHEROKEE NATION WEST. (7 Statutes at Large, p. 311.)

2. The treaty of 1833 was also made between the United States and the CHEROKEE NATION WEST.

3. The treaty of 1835 was made between the United States and the CHEROKEE NATION EAST, as was also the *supplement* thereto.

Here, then, are three treaties which were made between the United States and two separate and distinct peoples, and one that divided the old nation into two nations.

The same anxiety to vindicate "the truth of history" is evinced throughout the twenty-five mortal pages of the Rejoinder, (so-called,) in which almost everything is garbled and mis-stated—not only as to the old treaties, but as to the treaty now pending before the Senate.

We come next to the extract from the treaty of 1846, article 4th, upon which the eastern Indians rely to sustain their absurd demands.

To understand the rights of the "whole Cherokee people" under this treaty it is necessary to ascertain the meaning of the word "people."

A people is an organized community of persons living together; or, as defined by both lexicographers and writers on the law of nations, "a body of persons composing a community, town, city, or nation." A "people" and a "nation"

are used by Vattel as convertible terms, and with equal propriety may "the Cherokee people" and "the Cherokee Nation" be so used. It is used in this sense in the very treaty under consideration. Article 1st of the treaty of 1846 speaks of the Cherokee *Nation* or *people*. The whole Cherokee people and the whole Cherokee Nation convey precisely the same meaning; that is to say, the Cherokee community living under the same Government and laws.

We assert that for more than thirty years last past there has existed but one Cherokee Nation, and that nation was located west of the Mississippi river.

This assertion is borne out not only by the treaties entered into between the Cherokees and the United States, but also by the numerous official documents treating of Cherokee difficulties, and even by the admissions of the Cherokees east of the Mississippi at a time when it suited their interests to make them.

In 1835 there were two Cherokee Nations—one east and one west of the Mississippi river. The existence of the nation west was formerly recognized in 1828, the United States having in that year entered into a treaty with it. The existence of the nation east was recognized bytreaty as late as 1835, but during the several years immediately succeeding, the greater portion of the Cherokees forming that nation were removed west by the United States at the point of the bayonet, since which time the Cherokees east have ceased to exist as a nation—the term Cherokee Nation being exclusively applied to the Cherokees west of the Mississippi. Moreover, in 1839, after the removal of the eastern Cherokees to the west they were consolidated by an "act of union," which "act" was afterwards approved by the United States. With that nation the treaties of 1846 and 1866 were made, the very existence of the Cherokees east of the Mississippi being ignored, except as individuals *dehors* "the Cherokee Nation." And yet, the Cherokees of North Carolina, citizens of, and residing in, that State, where they have sued and been sued, and have paid taxes, and *where they took up arms to a man*, almost, *against the United States in the late war, and a company of them were employed in hunting down and conscripting Union men in East Tennessee;* and where, by the *Civil Rights Bill*, they are now all equal before the law with other citizens of the United States, and are represented in Congress, but gravely advance the theory that

they are a portion of the Cherokee Nation. It would be as great a *misnomer* to call the North Carolina Indians a portion of the Cherokee Nation, residing, as they do, a thousand miles or so beyond the jurisdiction of the Government, instituted for the benefit of all who claim to be of Cherokee blood, and owing, as they do, allegiance in another quarter, as to call the Germans, Irish or Swedes, permanently domiciled in this country, a portion of the German, British, or Swedish nations.

We said in our communication of January 19, 1869, and now repeat, that the former agent and attorney of the North Carolina Cherokees, Wm. H Thomas, placed on file at the Indian office the *status* of those Cherokees as citizens of North Carolina. The present delegation of North Carolina Cherokees affect to repudiate the admissions of their former attorney, forgetting that "*qui facit per alium, facit per se.*"

In an elaborate and able argument accompanying President Polk's message of April 13, 1846, (Sen. Doc. 298, page 134, vol. 35, 1st session 29th Congress,) this same attorney, Mr. Thomas, (who, by the way, commanded the North Carolina Cherokee battallion in the rebellion,) in order to show that the Cherokees of North Carolina were citizens of that State, uses the following language:

"Having been mostly born in the State, nothing more was necessary to make them citizens but a continued residence within her limits twelve months, agreeably to the laws of the State."

It is true that admissions made before one tribunal in a particular suit cannot, as a general proposition, be used as proof in a different suit before a different tribunal. Nor would we now hold the North Carolina Cherokees to a strict accountability for this language of their former attorney, placed on record when it was to their interests to be deemed citizens of North Carolina, were it not that it was in entire accordance with the laws of that State.

But again, we stated, and now repeat, that the *status* of the North Carolina Cherokees as citizens of North Carolina was recognized by the Court of Claims in the case of J. K. Rodgers vs. the United States, which court could not have exercised jurisdiction in the premises had the 2,133 Cherokees, who were a party to the suit, been a portion of the Cherokee natoin or people, and we gave as our authority for this view of the subject the decision of the Supreme

Court in the case of "The Cherokee Nation vs. The State of Georgia." (5 Peters, p. 1; 9 Curtis, p. 178.) The only reply vouchsafed by the North Carolina Cherokee delegation to this reasoning is the overwhelming and crushing one on page 15 of General Blunt's last pamphlet, that Rogers "was never authorized to appear for" said Cherokees "in court or elsewhere!"

Having thus shown the meaning of the word "people," and that the North Carolina Cherokees cannot be regarded as a portion of that people, we are called upon to consider the 4th article of the treaty of 1846, which they quote in support of their claims to a share in our lands or their proceeds. Now, if that delegation be not animated by the same spirit which their attorney insinuates has animated us, namely, a "disregard of the truth of history," they will acknowledge the following statement to be correct:

1. The treaty of 1846 was entered into as a final settlement of the rights and interests of three distinct parties of the Cherokee Nation, to wit: The old settlers, the treaty party, and the Ross party.

2. That *article* 4, in declaring that the *old settlers* or *Western Cherokees* "had no exclusive title to the territory ceded by the treaty of 1828" was, pure and simple, an agreement on their part to cease the resistance which they had been making to the seizure of their lands by the Eastern Cherokees on their removal west, and did not contemplate an acknowledgment that any portion of, or interest in, those lands was possessed by such Cherokees as might permanently remain east. Indeed, the very next sentence of the treaty confirms this, for it says, "but the same was intended for the use of, and to be the *home* for, the whole nation."

We re-assert and defy successful contradiction, that, even if these Indians be members of the Cherokee Nation residing east, they have, by their own acts and by all the treaties from 1835 down, been cut off from any interest in the property of the Cherokee Nation west, except upon condition precedent or of removal west. Otherwise, as well might all the fragmentary bands of Choctaws, Chickasaws, Creeks, Seminoles, &c, (to say nothing of bands in the Northern States,) remaining in Mississippi, Alabama, and Florida, claim to be entitled to a *pro rata* distribution of all the property of those nations settled west; or, still more pointedly, as well might the Cherokees of Texas, California, and

Canada set up a claim to a share of our national property, in proportion to their numbers, as the North Carolina Cherokees, whose modest pretentions we are now considering.

We might pause here, perfectly content with our labors, and would do so, were it not that a particular spot in the "Augean stable," which is receiving our attention, is peculiarly obnoxious to "the truth of history," and ought to be cleansed.

On page 6 of the rejoinder (so-called) we find it stated that, under the treaty of 1828, the consideration received by the United States Government for the cession of the 7,000,000 of acres and the outlet west as far as the sovereignty of the United States and their rights of soil extends was, "1st. The Arkansas lands; and, 2d. The ten to twelve millions of acres still owned by the Cherokee people east of the Mississippi, and for the tracts thus exchanged the Government agreed to pay $5,000,000 difference."

All that we have to say is, that nowhere in the treaty of 1828, is there a reference to either "the ten to twelve millions of acres still owned by the Cherokee people east of the Mississippi," or to the "five millions of dollars difference" which "the Government agreed to pay" for "the tracts thus exchanged."

On the contrary, by article 2 of that treaty made between the Cherokee Nation and the United States, the latter expressly "agree to possess the Cherokees, and to guarantee it to them forever, and that guaranty is hereby solemnly pledged, of seven million acres of land," (here follows the description of the tract,) "and in addition to the seven millions of acres thus provided for, and bounded, the United States further guarantee to the Cherokee Nation a perpetual outlet west, and a free and unmolested use of all the country lying west of the western boundry of the above described limits, as far west as the sovereignty of the United States, and their right of soil extends." And by article 5, "It is further agreed, that the United States, in consideration of the inconvenience and trouble attending the removal, and on account of the reduced value of a great portion of the lands herein ceded to the Cherokees, as compared with that of those in Arkansas, which were made *theirs* by the treaty of 1817, and the convention of 1819, will pay to the Cherokees immediately after their removal, which shall be within fourteen months of the date of this agreement, the

sum of fifty thousand dollars." In addition to which several small annuities, and sums to individuals, were agreed to be paid by the United States.

And, under article 7, the "Chiefs and headmen of the Cherokee Nation aforesaid (west) for and in consideration of the foregoing stipulations, do hereby agree, in the name and behalf of their nation, to give up, and they do hereby surrender to the United States, and agree to leave the same within fourteen months, as hereinbefore stipulated, all the lands to which they are entitled in Arkansas, and which were secured to them (the Western Cherokees) by the treaty of 8th of January, 1817, and the convention of the 22d of February, 1819."

It was not until 1835, that the Cherokee Nation East, in the language of the treaty of that date, ceded, relinquished, and conveyed to the United States all the lands owned, claimed, or possessed by them east of the Mississippi river. And in that treaty there was no allusion whatever made to the Arkansas lands, which had in fact been disposed of by the treaty of 1828, as above shown. So that the attorney for the North Carolina Cherokees must either plead guilty to a wilful perversion of the "truth of history" or confess that he does not understand the subject of which he treats.

That delegation, Mr. Commissioner, call your attention to what they term "the opinions and decisions of those high in authority, in the different Departments of the Government, who had from time to time severally considered the question at issue, viz: *that the eastern Cherokees had an equal right with the western Cherokees as a part of the 'whole Cherokee people,' to participate in the benefits accruing from the treaty of* 1835, *and prior treaties, and that the removal of the eastern Cherokees to the country west of the Mississippi, was not a condition precedent to the enjoyment of such benefits.*"

They find it extremely inconvenient, however, to point to a single opinion or decision upon this subject, and if they were to search through the whole range of official documents they could not find a single authority that construes the phrase "benefits accruing under the treaty of 1835, and prior treaties" to mean more than their right to share in that portion of the purchase money provided by the treaty of 1835, which remained after making certain deductions specified by that treaty.

The whole controversy of the past, the only question

ever agitated by the eastern Cherokees so far as "treaty benefits" were concerned, has turned upon a single point, namely, their right to a distribution *per capita* of the moneys secured to the Cherokees under the treaty of 1835, and the *supplement* thereto, and that distribution they acknowledge to have been made many years ago.

We challenge the North Carolina delegation to point to a single opinion or decision, whether Departmental or Judical, that has ever touched upon the question of the right of the Cherokees still east to participate in the proceeds of any of our national property. If they confront us with such authority, or surprise will, we confess, be at least equal to that which they feigned to feel on receipt of our reply to their first pamphlet.

Before closing, let us apply another, and equally fatal, logical test to the claim which the North Carolina Cherokees, through their attorney, General Blnnt, are putting forward to a participation in all the lands of the Cherokee Nation. The treaties and the patent guarantee to the Cherokee Nation "the occupancy and use" of those lands so long as they exist as a nation and live upon them. If abandoned by the Cherokee Nation, they are to revert to the United States Now, let us ask the significant question—"Have the eastern Cherokees a *better* title to these lands than the western Cherokees?" Can the eastern Cherokees "use and occupy" these lands, and yet remain in North Carolina, Tennessee and Georgia? If they can, the Cherokee Nation or persons composing that nation have the right to move back to those States, or any where else, and still hold the title to the lands *west* by "*use and occupancy.*" Is this the rational sequence of all the blood spilt, and treasure spent in removing and settling the Cherokees at the "permanent home" provided for them in the far west? The mere statement of the case is enough to show that, the demands of the eastern Cherokees are ridiculous and absurd in the extreme, and a barefaced attempt to black-mail the nation. As representatives of the Cherokee Nation we have invited the eastern Cherokees to come to our home in the west, to settle amongst us, to become really a part of the Cherokee people, and participate in all our rights, privileges, benefits and immunities.

The invitation, in what manner soever the North Carolina Cherokees may affect to regard it, is clearly an act of grace. They have repeatedly obligated themselves to remove west,

long before this. One of the chief considerations which led to the treaty of 1835, was such removal. It was entered into, among other things, as stated in the preamble, "with a view to re-uniting their people in one body and securing a permanent home for themselves and their posterity, in the country selected by their forefathers without the territorial limits of the State sovereignties."

Again, by art. 2, of that treaty, a tract of land is sold to the Cherokees for the reasen that it was apprehended that the lands formerly ceded did not contain "a sufficient quantity of land for the accommodation of the whole nation on their removal west of the Mississippi."

But still more forcibly: By art. 16 of that treaty it was "stipulated and agreed by the Cherokees that they shall remove to their new homes within two years from the ratification of this treaty," (29th December, 1835.) and in the supplement to that treaty, entered into on the 1st of March, 1836, it is declared to be the determination of the "President, (and of course, acquiesced in by the Eastern Cherokees who were a party to the treaty) not to allow any pre-emptions or reservations, his desire being that the whole Cherokee people should remove together and establish themselves in the country provided for them, west of the Mississippi river."

We desire, however, that our invitation shall be at once accepted: that the North Carolina Cherokees shall come now, or at least within the three years which our pending treaty allows. If the Cherokee Nation were to yield to any of the unjust demands of the North Carolina Indians, the latter might again be plundered and swindled as they before have been, and the Cherokee Nation would finally have to receive them as paupers, if at all. Where, we may ask, is the *per capita* and other moneys received by them under the treaty of 1835? We answer, mostly invested by their former attorney Thomas, in lands, but in his own name and for his own use and benefit. The residue has gone into his pocket through his little trading store, where alone, if we have been correctly informed, his Cherokee vassals are able to obtain necessary supplies in exchange for the interest money on the fund set apart to pay the expenses of their removal to the national home west—otherwise they would get nothing. We want them to cease to be the dupes and victims of the tribes of Thomases, and we appeal to the Govern-

ment of the United States to protect these misguided and unfortunate Indians from themselves, and their pretended friends; for this dissension is owing entirely to the fact that there would be very pretty pickings out of our eastern brethren should they cerry their point. We have negotiated a treaty placing the North Carolina Cherokees upon precisely the same footing with all of the Cherokee blood. Let them emigrate as we have done. The bones of our fathers are as dear to us as they are to them. We had been constantly "moving on" ever since the white man landed on the tide-water region of Virginia, until we at last found a resting place in our present home, to which we again cordially invite our eastern brethren, where we may all live in peace under our own laws.

We respectfully invite attention to the treaties, opinions of the Attorneys General, and decisions of the United States courts heretofore cited by us, from which it will appear:

1st. That the Cherokees who have become citizens or even residents *animo manendi*, of States east of the Missis sippi are not a part of "the whole Cherokee people." 2d. If they are a part of such people they cannot participate in the moneys of the Cherokee Nation west and in the use and occupancy of their lands whilst they permanently reside in States east of the Mississippi river. 3d. That the condition precedent to their participation in the lands or in the national funds of the Cherokees, to wit: removal west, has been self-imposed. At all events they are bound by it, as they claim the benefit of the treaties.

We respectly submit that the Government should carry out the policy of removing the Indians from the States to the Indian territory west—a policy inaugurated, as we have shown, many years ago, and adhered to for the past third of a century; but we venture to express the hope that no Indians shall be settled upon our lands until they shall have been regularly alienated by treaty stipulations. Knowing our people as we do, we entertain well-founded apprehensions that the intrusion of alien tribes before the ratification of the pending treaty would be calculated to provoke a serious breach of the peace. But, we repeat that, all who claim Cherokee blood shall be welcome and received with open arms and entitled to a full participation in all benefits.

If fragmentary bands of Indians residing east are permitted to set up claims for a participation in the funds be-

longing to the Indian nations west, we shall soon see a general raid by Indians, jay-hawkers, and others upon the trust funds in the hands of the Government. It would be a paying speculation to get up an emigration of Indians from the west to the east to draw their *pro rata* share of the funds belonging to their respective nations; erect themselves into tribes or nations within the States, and fatten the "land-sharks" who would follow in their wake.

These recent developments, tending as they do, to revive the ancient feuds which caused the shedding of so much Cherokee blood, furnish the strongest argument in favor of the speedy ratification of the treaty now before the Senate—which treaty is equally for the benefit of *all* through whose veins there flows a drop of Cherokee blood.

In conclusion, Mr. Commissioner, we repeat that although the North Carolina Cherokees are not a part of the Chero Nation or people in the political sense in which those convertible terms are universally used, and although they have forfeited by voluntary expatriation and the assumption of another allegiance all the rights they would now possess were they members of the Cherokee Nation, yet, they can regain all those forfeited rights by removing west and placing themselves within the jurisdiction of the only "Cherokee Nation" in existence. These forfeited rights which we promise to restore comprise not only a share by the North Carolina Indians, in proportion to their numbers, in all the lands secured to us by treaty and conveyed to us by patent of December 31, 1838, but also a share in all the national trust and school funds set apart by treaty for the exclusive use of the Cherokees west of the Mississippi. In other words. we guarantee to each of the North Carolina Cherokees who may remove, the very same rights which each member of our nation now possesses or may possess.

The condition is not hard. Many of us had to emigrate under difficulties that taxed to the utmost our every endurance, and upon our arrival west subsist upon the slenderest means. We have seen our lands steadily increase in worth until they are now extremely valuable, and even at the small amount which the government proposes to give (for the privilege of settling other Indians on the lands disposed of by the treaty of 1866—west of the 96° west longitude,) will yield to each member of the nation a handsome *per capita.*

Not only would each of the North Carolina Cherokees re-

ceive the twenty dollars removal money awaiting him in the Treasury, and the thirty-three and one-third dollars set apart for his first years' subsistance after arrival west, but a full share of our national wealth—and be welcomed to a Land which, by the favor of nature and by years of industry, has been made to "blossom as the rose."

Respectfully,

LEWIS DOWNING,
Principal Chief.
H. D. REESE,
WM. P. ADAIR,
SAM'L SMITH,
ARCH. SCRAPER,
J. PORUM DAVIS,
Delegation from the Cherokee Nation.

No. 11.

Protest of the North Carolina Cherokees against the Cherokee Treaty of 1869.

To the Senate of the United States:

The undersigned, head men and people of the North Carolina or Eastern Cherokees, who, under the 12th article of the treaty of New Echota, of 1835, continue to reside east of the Mississippi river, beg leave most respectfully to present to your honorable body this one protest against the ratification of the treaty concluded on the 9th day of July, 1868, by and between the Hon. N. G. Taylor, Commissioner of Indian Affairs, on behalf of the United States, and Lewis Downing and others, on behalf of the Cherokees residing west of the Mississippi river, which treaty is now pending in the Senate for confirmation.

We protest against the ratification of this treaty in its present form.

First. Because of its manifest injustice in granting to those Cherokees west the entire right of control of the national property and proceeds thereof, in direct disregard of the stipulations of the treaties of 1835, or '46, and written explanatory contract on file in the Indian Department signed by the delegation of both parties.

Second. Because in the future, as in the past, the payment of these national funds, the proceeds of the sale of the common lands, (in which we have all the rights possessed by the Western Cherokees as securely as treaty contract and judicial and official decree can make it,) will be expended by the Western Cherokee for their benefit, and to the Western Cherokee only, leaving us, as we have been for thirty years last past, sueing at the doors of the Department and Congress for our rights which have been granted us once only in all the payments of the national *per capita.*

Third. Because we desire the benefit of our share of the national trust and school funds, that we may educate our children, which privilege (though a large fund was placed in the Treasury of the United States in trust for educational purposes years ago) we have never enjoyed in the value of the first dollar.

Fourth. And, finally, we protest against the ratification of the pending treaty until the same shall be so amended as to secure to us, the Cherokees east of the Mississippi, a full and complete settlement of all our rights to the national funds, past and present; and farther protest against any further payment of any moneys belonging to said nation, until by decree of treaty such equities are secured ; and the Department having such money in trust required to pay *per capita,* from the Cherokee moneys, such sum as shall, in accordance with such rights, make said Eastern Cherokee equal in personal receipts and school funds, including disbursements for expenses in all respects, equal to the Western Cherokee; and further, that they have the same privileges, by appointment of an agent to examine and determine these national and private rights and claims as is now granted the Western Cherokee; and that the money so ascertained to be due said Eastern Cherokees from the national fund be paid them direct by an agent appointed to pay said Indians, with bonds approved by the Secretary of the Interior.

To this end we will ever pray; and, with such amendments as we have designated, we ask the ratification of said treaty; and in view of our rights we respectfully refer to the oft repeated constructions of the law by the Attorney General, and others whose duty requires its construction.

Your petitioners, therefore, pray this in justice to them in this their estate.

JOHN WAYNENA,
LONG BEAR,
WILLIAM McLEMORE,
SOWA NOO-KAH,
SKEE GEE,
WILSON AX,
RURCSHEE LES-KEE,
LITTLE JOHN,
JACKSON BLYTHE,
JAMES PECKORWOO,
JOHNSON KA-TE GENT,
ALLAN RUTTER,
TRAMPER,
JOHN AX,
JAMES BLYTHE,
JOHN ELIJOH,
MINK,
TAH-QUAH-TU-HEE,
ISAAC DAVIS,
BEN NEW-TON-EE,
BO LOWEEH,

Committee.

I hereby certify that the above was duly interpreted to the General Council, and by them approved and directed, signed by the various delegations, and delivered to their attorney for filing.

[Signed] N. J. SMITH,
Clerk of Council.

Interpreter of Council.

No. 12.

WASHINGTON, D. C., *March* 29, 1869.

HON. J. D. COX, *Secretary of the Interior:*

SIR: As delegates of the Cherokee Nation, we have been furnished with an official copy of a communication addressed to you on the 24th instant by the Commissioner of Indian Affairs in relation to the payment of certain interest to the

North Carolina Cherokee Indians. That communication appears to have been in reply to one of the 15th instant. addressed to your department by the Secretary of the Treasury on the subject of said interest, and by you referred to the Indian Office.

We do not assert that the reply of the Commissioner would inevitably lead to an interference with the rights of the Cherokee Nation, but in view of the fact that the North Carolina Cherokees, citizens of that State, have recently put forward a preposterous demand to share in all our national property even while remaining East, and that the letter of the Commissioner is in some respects, perhaps, vague, and in others illogical, we deem it important to our nation to notice it briefly in order to guard against any misapprehension that might be produced.

The question of payment of interest alluded to, arises under the act of Congress of the 29th of July, 1848. It is in substance as follows:

SEC. 4. That "the Secretary of the Treasury shall set apart, out of any moneys in the Treasury not otherwie appropriated, a sum equal to fifty-three dollars and thirty-three cents," and pay the same to each member of every Cherokee family of "Indians that remained in the State of North Carolina at the time of the ratification of the treaty of New Echota, May 23, 1836, and who have not been removed west of the Mississippi, or received the commutation for removal and subsistence," together with "interest at the rate of six per cent. per annum on such per capita from the said 23d day of May, 1836, to the time of the passage of this act, and continue annually thereafter said payment of interest at the rate aforesaid."

SEC. 5. That whenever any of said Indians "shall desire to remove and join the tribe west of the Mississippi, then the Secretary of War shall be authorized to withdraw from the fund set apart as aforesaid the sum of $53.33, and the interest due and unpaid thereon, and apply the same, or such part thereof as shall be necessary, to the removal and subsistence of such individual or individuals, and pay the remainder, if any, or the whole, if the said Indians, or any of them, shall prefer to remove themselves, to such individuals or heads of families upon their removal west of the Mississippi: *Provided*, That the amount herein required to be funded for the benefit of the said Cherokees in North Carolina, and the amount required to be paid them shall be

charged to the general Cherokee fund, under the treaty of New Echota, and shall be reimbursed therefrom."

The Secretary of the Treasury, in his letter above alluded to, (copy of which, however, we have not yet been able to obtain,) asks (as stated in the Commissioner's reply) whether "there is now on hand any such general Cherokee fund" out of which the interest, provided for in the act quoted, can be paid.

The Commissioner answers, that "there is no general Cherokee fund now on hand, if by the words 'general Cherokee fund,' it is intended to refer to a fund in which both the Eastern, or North Carolina Cherokees, and the Cherokee Nation are interested."

This statement is entirely accurate and satisfactory; but in the next sentence the Commissioner refers to a "national fund now on hand belonging to the Cherokee Nation," consisting of "stocks held in trust for them," under certain treaty stipulations, and invites special attention to them in order to show, as he says, "the manner in which the interest on said stocks is to be applied." He merely refers, however, to the several articles relating to the subject, and it is at this point that we wish to put in a brief and explicit statement in opposition to the pretensions of the North Carolina Cherokees, who, as we are informed, have even claimed to be paid the interest alluded to, out of these trust funds, failing to obtain payment elsewhere. We have to observe, then, that none of said stocks, interest, or other funds can be diverted to any such purpose. Article 10 of the Treaty of New Echota, and article 23 of the Treaty of 1866, provide, in the most specific manner, the way in which the funds of the Cherokee Nation shall be invested, the purposes for which such investments shall be made, and the application of all moneys arising from the same.

Under the first-named treaty a sum of $200,000, in addition to annuities, is constituted a general fund, the interest of which shall be applied by "the Council of the Nation to such purposes as they may deem best for the general interest of their people:" $50,000 as an orphan's fund; $150,000, in addition to the former school fund, as a permanent school fund, interest to be applied by the Council of the Nation for the support of common schools, &c., and on certain conditions withdrawal and re-investment of funds are provided for.

Under Article 23 of the Treaty of 1866 the national funds are to be applied as follows:

Thirty-five per cent. of interest for school purposes; 15 per cent. for the orphan fund; 50 per cent. for general purposes of the Nation, and such amounts shall only be drawn "on the order of the Cherokee Nation," and applied to said purposes; in addition to which provision is made for the payment of outstanding obligations of the Nation caused by the suspension of their annuities.

We confidently submit, then, that if treaty stipulations be binding, not even an act of Congress can lawfully be enacted by which our national funds can be disposed of to pay any interest alluded to in the act of 29th July, 1848, and we might rest the case here, were it not that the Honorable Commissioner of Indian Affairs has reached a conclusion, in discussing that act, which to our minds cannot be sustained in law, and might give rise to unfounded hopes on the part of the North Carolina Cherokees. He says, near the close of his communication, "I am of the opinion that the question to be submitted to the Attorney General should be, whether the appropriation made under the 4th section of said act of July 29, 1848, is not applicable to the payment of the interest therein provided to be paid, and also the principal, when necessary, as provided in the 5th section of same act, without regard to the proviso to the last-named section, and also whether the Secretary of the Treasury is not authorized to honor your requisition for the amount necessary to pay such interest."

With all proper deference, we submit, that to disregard the *proviso* by which the payments are to be charged to the New Echota fund and re-imbursed from it, would be to violate a principle of law, which, in the language of a former Attorney General, Mr. Crittenden, in his opinion of April 16, 1851, has remained for more than one hundred years "unquestioned and unshaken." That principle is, that, "where the proviso of a statute is directly repugnant to the purview, the proviso shall stand and be a repeal of the purview, as it speaks the last intention of the makers." [See Opinions Attorney General, vol. 5, page 331, on "Payment of certain moneys to the Cherokees," and the numerous authorities therein cited.] If it be decided that the proviso shall stand, the North Carolina Cherokees can receive no moneys under the act of July 29th, 1848, there being, as the

Commissioner of Indian Affairs says, no New Echota fund to which such moneys can be charged, and out of which they can be reimbursed. On the other hand, if the *proviso* is to be disregarded, then the interest which the North Carolina Cherokees are asking to be paid must be paid as it has heretofore been, under section 4, "out of any moneys in the Treasury not otherwise appropriated, a view, however, which we do not believe the Attorney General will sustain. It would gratify us, though, if it should prove otherwise, as we are desirous that the North Carolina Cherokees shall be paid under the said 4th section. We simply wish to place ourselves upon the record as fully understanding our rights and as opposing any pretension which they may put forward. claiming interest out of any of the funds of the Cherokee Nation. The New Echota fund, as is well known, has long since been distributed by the Government of the United States; and if the "removal and subsistence money," which was to be paid into the Treasury to constitute a fund for the benefit of the North Carolina Cherokees, was not so paid, the fault must rest with the Government.

In conclusion, we would respectfully insist, that if the North Carolina Cherokees be paid their interest moneys, they be paid in their true capacity of citizens of North Carolina, and that their demands, whether right or wrong, shall not reflect at all upon the Cherokee Nation, with which they are in no wise connected, although we have, in our pending treaty, secured to them a full share in all our national funds and other property, and a full equality of political rights, on the simple condition of removal west in a reasonable time.

We have the honor to be, very respectfully, your obedient servants,

LEWIS DOWNING,
Principal Chief Cherokee Nation.

H. D. REESE,
WM. P. ADAIR,
SAMUEL SMITH,
ARCH. SCRAPER,
J. PORUM DAVIS,
Cherokee Delegates.

No. 13.

To the honorable the Senate of the United States:

THE SALE OF THE CHEROKEE NEUTRAL LANDS IN KANSAS.

We have read with much surprise an Opinion published in the Daily Intelligencer of February 2d instant, given by Hon. Wm. Lawrence, Hon. Benjamin F. Butler, and Hon. George W. Julian, of the House of Representatives, and concurred in by Judge William Johnson, of Ohio, relative to the sale of the Cherokee Neutral Lands (so-called) in Kansas, in which the following positions are taken, namely :

1st. Under the act of Congress May 28, 1830, and the treaty of the 29th of December, 1835, the Cherokee tribe of Indians acquired the right of occupancy in the Cherokee Neutral Lands, but without any power of alienation, and no condition that the lands should revert to the United States if they should be abandoned by the tribe.

2d. That the tribe, as such, has abandoned the lands.

3d. That the sale of said lands for the benefit of the Cherokees by the Secretary of the Interior, acting in behalf of the United States, under the provisions of the treaty of August 11, 1866, is void.

Without stopping to inquire whether the treaty-making power, unaided by an act of Congress, can dispose of public lands, we propose to show that the gentlemen who gave the opinion alluded to, have mistaken the facts in the case ; that the Cherokee title to the said lands was in fee simple, and that they were disposed of in conformity with the laws and usages of the United States, and that they never abandoned said lands.

In the first place, the Cherokees acquired the "Neutral Lands" in Kansas from the United States under the provisions of article 2d of the treaty of December 29th, 1835, by *purchase*, and not by an "exchange of lands," in accordance with the act of Congress of May 28th, 1830, and the United States, in said article, "for and in consideration of five hundred thousand dollars," did "covenant and agree to convey to the said Indians and their descendants, by patent in fee simple, the tract of land estimated to contain 800,000 acres," since known as the Cherokee Neutral Lands.

The United States, under said article, also agreed to convey, by patent, to the Cherokees, a certain other tract of

land, previously ceded to them under the treaty of February 14th, 1833, "containing seven millions of acres, together with a perpetual outlet west, as far as the sovereignty of the United States and their right of soil extends." This conveyance was in consideration of an exchange of lands, and not by purchase, as in the case of the Neutral Lands."

Both these tracts of land were embraced in one patent to the Cherokee Nation, and the covenants in relation to them, respectively, are recited, namely: that the United States guarantee to the Cherokees "the occupancy and use" of the seven millions of acres and of the perpetual outlet west; and the title in fee simple, to the 800,000 acres in Kansas, since known as the "Neutral Lands." The reversionary interest of the United States attached only to the seven millions of acres and the outlet.

It is true article 3d of said treaty provides that the lands ceded by the treaty of 14th of February, 1833, including the outlet, and those ceded by the treaty of December 29th, 1835, shall all be included in one patent, to be executed to the Cherokee Nation of Indians by the President, in accordance with the provisions of the act of May 28th, 1830; but it was clearly the understanding of the parties, as evidenced by the covenants recited in said patent, that the *occupancy and use* of the "seven millions of acres" and of "the perpetual outlet;" and the title in "fee simple" to the 800,000 acres (known since as the Neutral Lands in Kansas) were conveyed and guaranteed by the United States. Any other construction would be a *fraud upon the Indians*, and destroy the covenant contained in article 2d of said treaty as to the 800,000 acres; *sold*, as before stated, by the United States for and in consideration, *not* of an *exchange* of lands, but of $500,000 paid in cash by the Cherokee Nation to them.

But, even if the Cherokees acquired only the right of occupancy in the "Neutral Lands," the conveyance by them of said lands in trust to the United States, under the provisions of the treaty of August 11th, 1866, to be sold by the Secretary of the Interior for the benefit of the Cherokee Nation, conveyed to the purchasers a perfect title under the laws of the United States and the decisions of their Supreme Court.

The act of Congress of June 30, 1834, declares that, "no purchase, grant, lease, or other conveyance of lands, or of

any title or claim thereto, from any Indian Nation or tribe of Indians, shall be of any validity in law or equity, unless the same be made by treaty or convention entered into pursuant to the Constitution."

Of course the converse of the foregoing is true, namely: That any conveyance of lands made by an Indian tribe or nation by treaty or convention with the United States pursuant to the Constitution is valid. We presume it will not be contended that the treaty of 1866, between the United States and the Cherokee Nation was made in violation of the Constitution.

A majority of the treaties made between the United States and the Indian tribes or nations contain grants to missionary societies and other charitable institutions, and to individuals, made by the Indians with the consent of the treaty-making power. Moreover, this practice has prevailed ever since the earliest settlements of the white men on this continent; and the titles thus conveyed have the sanction of the Supreme Court of the United States, distinctly announced in the case of Mitchell vs. The United States, 9 Peters.

The Court says: "It was an universal rule, tha tpurchases made by Indian treaties in the presence and with the approbation of the officers under whose direction they were held by authority of the Crown gave a valid title to the lands; it prevailed under the laws of the States after the revolution, and yet continues in those, where the right to the ultimate fee is owned by the States or their grantees.

"It has been adopted by the United States, and purchases made at treaties held by their authority, have been always held good by ratification of the treaty, without any patent to the purchasers from the United States."

We might multiply precedents and authorities. It is only necessary, however, to say that the Cherokee Nation never abandoned the "Neutral Lands in Kansas," but were dispossessed by the unlawful intrusion of citizens of the United States; and these lands were, at the instance, if not the dictation, of the United States conveyed to the United States in trust to be sold for the benefit of the Cherokee Nation. We are at loss to understand how the Honerable gentlemen who gave the opinion we have been noticing arrived at the conclusion, that "*good faith and justice require that Congress should enact a declaratory statute, and these lands shall be subject to pre-emption, entry, and settlement, giving settlers the right*

to purchase at one dollar and twenty-five cents an acre; and that the Cherokee Nation should receive a sum equal to one dollar per acre out of the proceeds of the sales!" instead of the appraised value of the "Neutral Lands" held by actual settlers upon them at the date of the treaty of August 11, 1866, and one dollar per acre for the residue of said lands in conformity with the provisions of said treaty; and thus deprive the Cherokees of at least $200,000.

The "Neutral Lands" in Kansas were sold to the Cherokees, as we have shown, in 1835, for the sum of $500,000 in cash; but with the exception of a few isolated Cherokee families, the citizens of the United States have had the exclusive use of said lands ever since, whilst the Government has had the use of the money. And, now it is gravely proposed to deprive them of the proceeds of the sales of their lands. Surely, the Honorable gentlemen, who gave such advice, had not fully examined and comprehended the facts of the case; and did not consider the effect of such a course; which would be to invite intrusion upon all Indian lands, by armed bands of squatters; the result of which would be the subversion of all the treaties and the violation of every guaranty in favor of the Indians.

LEWIS DOWNING,
Principal Chief of the Cherokee Nation.

H. D. REESE,
WM. P. ADAIR,
SAM'L SMITH,
J. P. DAVIS,
A. SCRAPER,
Cherokee Delegation.

WASHINGTON, *February*, 1869.

Protesting against any action of the United States tending to destroy the rights of the Cherokees, Creeks, Seminoles, Choctaws, and Chickasaw Nations.

WASHINTON, D. C., *February* 2, 1869.

To the Honorable Chairman of the Indian Committee of the United States Senate:

The undersigned, delegates and representatives of the Che-

rokee, Creek, Chickasaw, and Choctaw Nations of Indians, would very respectfully call the attention of your honorable committee to the fact that they have noticed in the proceedings of the Senate of the 27th ultimo, (January) the introduction of, into that body, a bill, and the reference of the same to your honorable committee, entitled "A bill to enable the Cherokee, Creek, Seminole, Choctaw, and Chickasaw people to become citizens of the United States."

The undersigned, impelled by a sense of duty they owe their constituents, and without any disposition to interpose any obstacles against the designs of the Government of the United States further than they are required so to do by the duty they owe their people, as well as the Government, under treaty stipulations, would respectfully beg leave to inform your honorable committee that they do not approve the bill referred to for the following reasons, viz:

1st. That it proposes to abolish the laws regulating trade and intercourse between our nations and the United States. Any one who is familiar with these laws will admit that they constitute a code for our protection as guaranteed by treaty stipulations. Their removal will therefore be the removal of all protection to our nations, so that our people will be exposed to intrusions, aggressions, and crimes of all kinds, by unscrupulous and designing men, who are ever on the alert to gratify selfish ends.

2d. That it provides that when the public domain or lands of our people shall be surveyed and allotted the expense of such survey and allotment shall be borne by our people. This provision is in plain violation of our treaties with the United States, made in 1866, which provide that the United States shall bear such expense (See treaties with Choctaws, Chickasaws, Cherokees, Creeks, and Seminoles—United States Statutes at Large, 1866.)

3d. That it provides that any surplus of lands that may be remaining after the survey and allotment alluded to above, may be sold to any persons whomsoever that may choose to purchase the same. This provision is also in conflict with our treaties with the Government in 1866, which declare in plain terms that our lands shall be allotted and disposed of alone to our own citizens. (See treaties between United States and Choctaws, Chickasaws, Cherokees, Creeks, and Seminoles—United States Statutes at Large, 1866.)

4th. That it limits the return of our people to their respective nations (and who are now in the United States) to a time at which our lands may be surveyed and allotted. This provision is also in contravention to our treaties made with the United States in 1866, which either fix a specified limit of time for the return of our people, or leaves that question for our respective legislatures to determine. (See treaties with Choctaws, Chickasaws, Cherokees, Creeks, and Seminoles—United States Statutes at Large, 1866.)

5th. That by implication, if not in plain terms, it abolishes our ancient nationalities that our people have inherited from time immemorial, and *admits* that hitherto our nations have not been invested with the *legal* rights of "self-government" and of making "contracts," and instead of our time-honored and heretofore undisputed national capacities this bill proposes to make our nations mere political corporations of recent origin, the creatures of Congress, and liable to be uncreated or destroyed by that body at its pleasure; for it follows, as a logical sequence, that whatever Congress may make, it may with the same prerogatives and power destroy.

We are not prepared to admit even by implication or construction that our people do not constitute, or have not constituted, nations; or that they are not capable, or have not been capable, of making contracts, (treaties;) or that they are not invested with the powers of self-government; or that Congressional legislation is necessary to endow them with the attributes of self-government or the principles of sovereignty, sufficient to enter into binding contracts. It cannot be successfully denied that our nations are far older than the United States; that their existence dates back into antiquity, to a "time whereof the records and memory of men runneth not to the contrary."

All the great nations of Europe have acknowledged the national existence of our people, prior to the existence of the United States; and that Government, by all of its official acts, and more especially by its treaties with our people, have acknowledged their existence as nations, invested with the powers the bill under consideration proposes to *give* them.

Our people are *allies* of the United States, offensive and defensive. They are not citizens of the United States, as the title to the bill under consideration *admits*. Our nations are under the protection of the United States. All

history and international law admit that a weak nation may place itself, for self preservation, under the protection of a stronger one, (just as our nations have done in respect to the United States,) and yet retain its sovereign capacity.

The undersigned, in conclusion, would respectfully submit, that a careful analysis of the bill they are noticing will convince your honorable committee that it cuts off all protection from our people by law; that it gives our lands, not only to our own people, but also to any one else who may choose to purchase them; and, finally, that it swallows up our ancient nationalities with political corporations whose existence is dependent upon Congressional legislation; and, while it *denationalizes our people it has not the effect of making them citizens of the United States.* In view of the facts set forth, the undersigned, in behalf of their respective nations, would respectfully *protest* against the bill referred to, and would ask that your honorable committee be pleased not to recommend its passage. In this connection the undersigned would take occasion to assure the Government of the United States of the utmost good faith of their people in reference to the treaties between them and the Government, and of their readiness to execute the same, and of their alacrity to comply with the wishes and policy of the Government whenever they can do so; and they trust that their objection to this bill may not be construed into contumacy, but may be attributed to a duty they owe to their people, as well as to the Government of the United States.

HOLMES COLBERT,
COLBERT CARER,
Chickasaw Delegation.

RICHARD FIELDS,
Special Agent for Cherokees.

LEWIS DOWNING,
Principal Chief of the Cherokee Nation.

H. D. REESE,
WM. P. ADAIR,
SAMUEL SMITH,
J. PORUM DAVIS,
ARCHIBALD SCRAPER,
Delegates from the Cherokee Nation.

G. W. STIDHAM,
S. W. PERRYMAN,
Delegation from the Creek Nation.

No. 15.

Agreement entered into on behalf of the Cherokee Nation by its Commissioners, W. P. Ross, Principal Chief, Lewis Downing, Assistant Chief, and Daniel H Ross, Houston Benge, Red Bird, Six Killer, and N. S. Goss, President, and P. B. Maxon, Secretary, of the Union Pacific Railway Southern Branch Company.

The Cherokee Nation, by its above-named Commissioners, agrees with the Union Pacific Railway Company, Southern Branch, through its Commissioners, Goss, President, and Maxon, Secretary, as follows:

SECTION 1. The Union Pacific Railway, Southern Branch, agree to build this railway and put the same, with all its necessary rolling stock, in working order through the Cherokee Nation, between the Grand and Virdigris River, or along the valley of the former river, or the shortest and best practicable route to Fort Gibson, Cherokee Nation, and from Fort Gibson to the southern boundary of the Cherokee Nation, or by the valley of the Arkansas river to or near Fort Smith, Arkansas; and the said Company, by said Commissioners, further agree to commence said work within one year of the date hereunto attached, and to continuously and actively work at the same until completed.

SEC. 2. The Cherokee Nation, through its above-named Commissioners, agrees that the said railroad company shall build its road through the country above described, and shall have and enjoy the privilege of right of way accorded by Article 11 of the Treaty of July 19th, 1866, and that said privilege shall inure to such company on their building and completing said road; and further the Cherokee Nation, by its said commissioners, agree to take stock in said railway company to the extent of five hundred thousand dollars, ($500,000,) to be raised from the proceeds of the sale of the lands belonging to the Cherokee Nation, and lying west of the ninety-sixth (96°) degree of west longitude, when said lands can be sold according to the terms of the treaty before mentioned, or according to such terms as may be agreed on between the parties to this agreement and the Government of the United States; and its further agreed by the parties to these articles, that the said stock shall be paid in on the completion of each ten (10) miles of road from Fort Gibson to the Kansas State line, in equal proportion to

the distance in the survey as made, and that on the completion of each ten (10) miles of said road it shall be examined by the Commissioners of the Cherokee Nation as above named, and if approved then, that the above amounts per mile shall be paid in as hereinbefore specified, provided that it is conceded by the parties to these articles that the Cherokee Nation may, at any time within three years, take a further amount of stock, not to exceed the proceeds on the sales of one million of acres more of the lands of the Cherokee Nation lying west of the ninety-sixth (96°) degree of west longitude, in case the Cherokee Commissioners, with the approval of the Cherokee Council, shall so agree to do; and it is further agreed that for the amounts, as hereinbefore agreed to be subscribed, in stock paid up, certificates shall be issued to such commissioners on behalf of the Cherokee Nation, according as said amounts are paid; and further it is agreed on between the parties, that until there shall be an amount of stock subscribed in said road, entitling them to a greater number, that the Cherokee Nation shall be entitled to two directors in said railway company.

SEC. 3. It is further agreed, on the part of the Cherokee Nation, by its commissioners, that to aid in the construction of the said road a *bonus* of the proceeds of the sale of two hundred and fifty thousand acres of the lands owned by the Cherokee Nation, and lying west of the ninety-sixth (96°) degree of west longitude, shall be made to the said company on the following conditions: The lands in question to be sold under the provisions of the treaty of July 19th, 1866, or according to such provisions as may be agreed upon between said commissioners, and approved by the National Council and the Government of the United States, and shall be paid to said company in equal proportions for each ten miles of road constructed between Fort Gibson and the Kansas State line, according to the survey of said road; and on the completion of any ten miles of said road, it shall be examined by said commissioners, or a majority of them, and if approved, that said pro rata portions of said BONUS shall be paid for such ten miles: *Provided*, That said Cherokee Commissieners may loan said amount for such ten miles actually in process of construction, not to exceed ten miles at a time, in order to complete the same, to said railway company.

SEC. 4. The Cherokee Nation agree, by said commissioners, that said railway company, for purposes of constructing

said road, may use, from lands the property of the Nation not claimed by individuals, such rock, sand, or earth, as may be required for such road; and further, that said company may purchase from said commissioners, on behalf of the Cherokee Nation, such timber, situated on the public lands of the Cherokee Nation, and not claimed by individuals, as may be required for the construction of said road, and that such sales of timber shall be for cash, or for paid-up shares of stock, as the commissioners may agree and the Council of the Nation may agree.

SEC. 5. It is further agreed, on the part of the Cherokee Nation, in order to secure the early building of said road, that their delegations, or legal representative, in Washington shall secure such early and prompt action, as to the sale or disposal of the lands of the Cherokee Nation lying west of the ninety-sixth (96°) degree of west longitude, as aforesaid, and on such terms as shall best further the early building of said road.

SEC. 6. In the agreement herein entered into, it, with the distinct understanding, that if said Union Pacific Railway Company, Southern Branch, fail to commence the work on said road within one year from the date hereof, or shall cease to build, or to continue to build said road, or shall fail after the second year to build at least ten miles in each year within said Nation, and place the same in working order, that the Cherokee Commissioners, and the Nation they represent, may be released from the terms of this obligation, &c., and at liberty to make agreement with any other company in reference to building said north and south road, and on such failure on the part of the company, and a formal notification thereof by the commissioners, all further subsidies, stock, subscriptions, or other aid rendered may, from such date, be discontinued, subject to the approval of the National Council.

SEC. 7. It is further agreed, that the said railroad may demand and receive for the transportation of passengers, citizens of the Cherokee Nation, and freight owned by them, such reasonable rates as may be, from time to time, prescribed by law by the National Council: *Provided*, That the same shall be uniform with the rates charged on said road, as regulated by law in the limits of the State of Kansas.

Entered into and subscribed this the thirty first day of October, A. D. 1866, at Talequah, Cherokee Nation.

[Signed] WILL. P. ROSS,
Principal Chief Cheaokee Nation.
LEWIS DOWNING,
Assistant Chief Cherokee Nation.
S. H. BENGE,
R. SIX KILLER,
D. H. ROSS,
Commissiouers on behalf of Cherokee Nation.
N. S. GOSS, *President,*
P. B. MAXON, *Secretary,*
Com'rs on the part of the Union Pacific Railway, Southern Branch, Company

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The foregoing articles of agreement entered into on behalf of the Cherokee Nation, by its Commissioner Wm. P. Ross, Principal Chief, Lewis Downing, Assistant Principal Chief, Daniel H. Ross, S. H. Benge, and Red Bird Six Killer, appointed by an act of the National Council, the 25th day of October, 1866, submitted to the National Committee on this the first day of November, 1866, is duly ratified and confirmed.

TAHLEQUAH, CHEROKEE NATION,
November 1st, A. D. 1866.

SMITH CHRISTIE,
President National Committee.
H. D. REESE,
Clerk National Committee.

Concurred November 2d., A. D. 1866.
JOHN YOUNG,
Speaker of the National Council.
R. B. ROSS,
Clerk of the National Council.

Approved November 2d., A. D. 1866.
WILL. P. ROSS.
Principal Chief Cherokee Nation.

I, William P. Ross, Principal Chief of the Cherokee Nation, do hereby certify that the foregoing is a true copy of the articles entered into between the Commissioners on

the part of the Cherokee Nation, and N. S. Goss, President and P. B. Maxon, Secretary, Commissioners for the Union Pacific Railway Southern Branch Company, on the other part, with the action on the part of the Committee and Council of the Cherokee Nation, ratifying the same. And I further certify that the foregoing is a true and literal copy of the original agreement on file in the executive office of the Cherokee Nation.

Witness my hand this the twenty-first day of January, A. D. 1867.

WILL. P. ROSS,
Principal Chief Cherokee Delegation.

No. 16.

MEMORIAL of Lewis Downing, Principal Chief of the Cherokee Nation, remonstrating against the settling of various Indian Tribes on the Cherokee Domain West of the 96th degree of West Longitude.

MARCH 23, 1869.—Referred to the Committee on Indian Affairs, and ordered to be printed.

To the Honorable the Senate of the United States:

The Undersigned, Principal Chief of the Cherokee Nation, would respectfully ask leave to call the attention of your honorable body to the fact that since 1866, as he is reliably informed, treaties have been made with various tribes of Indians, with the view of settling them on the Cherokee domain west of the 96th degree of west longitude. These treaties have been made in plain violation of the Cherokee treaty of 1866, in this, that the Cherokees, so far from having contracted with said Indian tribes for the sale of those lands, were not even consulted as to the price at which the United States has undertaken to dispose them. In reference to these infringements upon our rights, the Cherokees, prompted by a desire to cultivate harmonious relations with their red brethren as well as with the United States, have preserved a silence and resignation characteristic of a com-

paratively helpless people who have reposed unbounded confidience in the integrity and good faith of the Government.

The country west of the 96th degree thus proposed to be taken away from us without adequate compensation, and turned over to other Indians, has been guaranteed to us by the most sacred and solemn pledges of the United States.

The tragical history of our people cannot fail to awaken a deep interest in every American who is animated by a sincere love of liberty and of country; nor can any true American fail to appreciate the munificence of the Cherokee people, when he calls to mind the fact that the vast territory comprising the States of Maryland, Virginia, Georgia, Kentucky, North and South Carolina, Tennessee, and a part of Alabama, were once our hunting grounds. For our lands east of the Mississippi river, worth to-day, perhaps, $200,000,000, the United States gave us about $2,000,000, and the lands we now occupy, including the outlet west, with the sacred promise, as before stated, that we should never be disturbed in our possession of them, without our consent, while "grass grows and water runs;" and 30 odd years ago the Cherokees were removed thither, many of them in chains and at the point of the bayonet, and placed in such possession. Notwithstanding the promises of the United States, the Cherokees with sorrowful hearts have seen their lands wrested from them, from time to time, by the strong arm of power, in disregard of law, humanity, or justice. When Kansas was organized into a State, she took from the Cherokees their "neutral lands," estimated at 800,000 acres, and also a strip of land off of our northern border, estimated at 750,000 acres; and now the United States, our guardian and protector, proposes in addition, as we learn with inexpressible pain and grief, to dispose of all our country west of the 96th degree, without our consent, and without adequate compensation, for the purpose of settling other Indians thereon. We feel this treatment the more keenly, because it has been our pride and our boast that we were under the protecting wing of your great and powerful Government, whose illustrious example we have endeavored to emulate in its march of civilization, refinement, and religion. Your Government asked us to become civilized, and we became so. We have adopted your form of government. We have embraced your religion. We have done everything

within our power that you have asked us to do. We have watched and cherished your interests with faithful and devoted hearts. Years ago, in your wars with the hostile Creeks and Seminoles, we poured out our blood for your Government as a child would for its parent. And in the war to suppress the late rebellion almost one-half of our people have been sacrificed upon the altar of your country. Our land is filled with helpless widows and orphans, and our country and our people, war-ridden, poverty-stricken, and stripped even to nakedness, present such evidences of devotion to your Government as defy a parallel in history. Yet, notwithstanding our sacrifices and our devotion to your Government, and notwithstanding the strong tenure by which we are entitled to hold our lands, (a tenure far better fortified by law than that of any other Indians on the continent,) it would seem by the tardy action of the Government toward us that we are doomed to be worse treated than any other Indian tribes, however small and insignificant they may be. Your Government treated and paid for the western country of the Choctaws, Chickasaws, Creeks, and Seminoles in 1866. It has treated with all the wild and warlike tribes of the western plains and mountains; and now, will it deal so unjustly and cruelly with the Cherokees, the friends of the United States in war and in peace, as to take away their lands and refuse to treat with them so that they may be paid for them? We trust not. We shall hope for better things. We are not willing to believe that a government, whose military fame eclipses that of any nation of the globe, would stoop so low as to rob a poor Indian of his legal and moral rights.

Taking this view of our relations with your Government, I would respectfully invite your attention to our pending treaty, transmitted by the Executive Department to your honorable body for ratification in the early part of last summer. This treaty is a necessity to the United States, since provision is therein made that the lands west of 96°, designed for the occupancy of other Indians, shall be paid for; which payment, according to treaties with the Cherokees, is a condition precedent of such occupancy.

In this connection I respectfully beg leave to state that should the Government refuse to pay the Cherokees for these lands, and attempt to settle other Indians on them in disregard of the remonstrances of the Cherokees, much

trouble between the Cherokees and such Indians will surely follow, and possibly lead to dire results. As early as last October my attention was called to the fact that difficulties were imminent between Indians who claimed a home on our western country and the Cherokees. These difficulties were rapidly assuming a warlike aspect, when, in December last, I despatched a delegation to the scene of disturbance to restore and preserve peace until such time as the Cherokees might be able to make some satifactory arrangement with the Government whereby their western country could be occupied by those Indians legitimately and peaceably.

I would beg leave to assure the Government, through your honorable body, of the earnest desire of the Cherokee people to carry out all the provisions of their treaties in the utmost good faith, and that I, as their chief, will spare no pains and lose no occasion to preserve and strengthen the happy relations now existing between the Cherokees and the Government of the United States; but I deem it my duty to state, most respectfully, that I fear it will be beyond my power to restrain the Cherokees from resisting all encroachments from other Indians.

Respectfully submitted.

LEWIS DOWNING,
Principal Chief of the Cherokee Nation.

WASHINGTON CITY, *March* 22, 1869.

No. 17.

WASHINGTON *April* 3, 1869.

To the President of the United States of America:

SIR: The undersigned, delegates from the Cherokee Nation, on arrival in this city, about the first day of January, 1868, immediately addressed themselves to the object of their mission, namely, the negotiation of a treaty with the United States, supplemental to that of 1866, and your predecessor, on learning the object of their visit to this city, promptly directed negotiations to be opened with them.

At the time of the conclusion of the treaty of 1866, the United States had recently triumphed in the late war of rebellion. The animosities engendered by the conflict had not subsided. Those animosities had extended to the Indian

nations of the Southwest, and were, amongst the Cherokees, intensified by long years of hostility between rival parties. Consequently, it was then difficult so to draft a treaty as to give general satisfaction and equal protection to all in the Cherokee country. Some time afterward it happily so fell out that, by a fusion of parties, the present principal Chief of the Cherokee Nation was elected. Those who had long regarded each other with deadly hatred were brought together, and all party feuds and ancient enmities laid aside, we hope, forever. For the first time in thirty-five years there was peace and good will amongst the Cherokees. Hence, to perpetuate this gratifying state of affairs it became necessary to abolish all party distinctions, restore the full and equal operation of all laws of the nation, and, in short, to make the Cherokees a homogeneous people.

The treaty of 1866 had, within the short period of its trial, proved inadequate to the necessities of our people. To use the language of the late Secretary of the Interior, (Mr. Browning,) "It was difficult to understand and impossible to be executed." This grew out of the attempt to reconcile things essentially irreconcilable; such as a divided jurisdiction as the Cherokees, and, in effect, the establishment of their tribal organizations and governments. Under that treaty, too, provision had been made for the settlement of other Indians within the Cherokee country west of the 96th degree of west longitude by sale of lands to such tribes as the Government of the United States might desire to settle thereon; the terms to be agreed upon between the Cherokees and such tribes, and in case of disagreement the President of the United States to fix the price.

A portion of the Cherokee lands, namely: the "Neutral lands" and the "strip" lay within the State of Kansas, and had been intruded upon by citizens of the United States. It was, therefore, provided in said treaty that these lands should be conveyed in trust to the United States, to be surveyed, appraised, and sold for the benefit of the Cherokee Nation. A sale of the "Nentral lands having been made to the Emigrant Aid Company of Connecticut, and then another sale of the same lands made to James F. Joy, of Detroit, Michigan, the Attorney General of the United States gave it as his opinion that the former sale was invalid. Still, the effect of these two sales was to theaten litigation between the rival purchasers, and to keep the Chero-

kees from realizing the purchase money. In order to settle this matter, a supplemental treaty was negotiated and ratified under which, with the consent of all parties, Mr. James F. Joy was permitted to hold the lands and to proceed to make payments for the same.

But no sooner was this new arrangement entered into than new complications arose, and a claim was set up by all the settlers on the lands, not only those who were there at the date of the treaty of 1866, but such as located afterwards, to homesteads, at the appraised value of the lands. In this, the Cherokees had no interest, except in so far as these pretensions might prevent Mr. Joy from going on with his payments to the United States in trust for them. To obviate all difficulties, we proposed, and the Commissioner on the part of the United States agreed, that the money paid to the United States many years ago by the Cherokees for those lavds should be refunded, with interest at the rate of 5 percent. per annum, and that the United States should take an assignment of all interest in the sale to Joy. We thus preferred that the United States should deal with their own citizens unembarrassed by treaty stipulations with our nation. Citizens of the United States had also taken possession of the "strip" in Kansas belonging to our nation, and we proposed to relinquish the land to the United States instead of having it sold for us, as in the case of the "Neutral lands." We also proposed to cede to the United States for the settlement of Indians thereon, all our rights, title, or equitable claim to land west of the 96th degree of west longitude. This would simplyfy the transaction and leave the United States free to regulate the rights of actual settlers on said "strip" in accordance with their policy and laws relative to the public lands, and at the same time enable them, (the United States) to provide homes for such Indians as they desire to settle in the Cherokee country west of 96°. All this was agreed to by the Commissioner on the part of the United States. But the Senate has thus far failed to ratify the agreement, and a prominent Senator from the west has recently introduced a joint resolution, (S. R. 6) "to enable actual settlers on certain lends within the State of Kansas, known as the 'Cherokee strip,' to purchase said lands." The preamble to said resolution declares that these lands were *ceded* to the United States by the treaty of 1866, whilst, in fact they were conveyed in trust to be surveyed,

appraised, and sold for the benefit of the Cherokees, in parcels, to the highest bidder, or as a whole, to a responsible purchaser, for not less than one dollar per acre. The resolution goes on to provide that "said lands are hereby declared as public lands, subject to the several provisions of the pre-emption and homestead laws, as operative in the State of Kansas, and that the Secretary of the Interior be, and is hereby directed, to cause said lands to be surveyed, as the public lands of the United States are surveyed, under the direction of the Commissioner of the General Land Office."

Here the very case has arisen which we anticipated and endeavored to guard against by the proposed cession of these lands to the United States. The treaty of 1866, in so far as it regards the "strip" in Kansas, is practically abrogated and set aside by squatters on those lands.

No appraisement and sale, on such account of the Cherokees, to the highest bidder, can be made as provided by treaty, nor if said resolutions should pass, would an average of one dollar per acre be realized, for the simple reason that the settlers having taken up all the best lands will, if allowed to pre-empt. at $1.25, leave the refuse and unsaleable lands on hand. This would be not only a violation of the treaty of 1866, but a fraud upon the Cherokees, and would render it impossible to sell the whole tract to a responsible purchaser for not less than one dollar per acre.

In addition to the seizure and appropriation of the "Cherokee strip," by right of "squatter sovereignty," *the United States,* by treaties with the Comanches, Kiowas, Cheyennes, Arrapahoes, Osages, and others, undertook without notifying the Cherokees and without affording them an opportunity to discuss the important subject and agree with those Indians as to the price to be paid for their new homes, to establish them upon our lands; and in the case of the Delawares even, who were received into the Cherokee Nation under a compact between them and the Cherokees, which was approved by the President, the United States have wholly failed to take the necessary steps to transfer to the Cherokees stocks held in trust for the Delawares in payment for the lands sold to them, nor for general national purposes and school funds, for which the said Delawares, being now Cherokee citizens, are rateably responsible and chargeable with.

The undersigned, upon their arrival at this place, applied to the President for redress of their grievances, and were met in a just and friendly spirit, and, as herein before stated, an officer was assigned to the duty of treating with us with a view toward amending the treaty of 1866 in such particulars as might be deemed indispensable to the cause of justice.

Finally, after a careful and patient investigation of the whole Chorokee history in its relations to the United States, as well in the past as in the present, a treaty adjusting all questions upon a satisfactory basis was negotiated, signed, and submitted to the Senate in July, 1868. Instead of its being acted upon by that body, as we had confidently hoped and believed would be the case without delay, nothing was done during the 40th Congress, and we were obliged to go home without consummating the object of our mission.

We returned hither some months age, and so far have in vain pleaded for the ratification of the treaty which would cement the friendship established amongst all our people and avert trouble, disturbances. and possibly collisions between them and the settlers on the "strip," who not only disregard our rights in connection with our lands in Kansas, but are even intruding upon that portion of our country contiguous to the "strip" and lying immediately south of the Kansas line. We also apprehend hostilities between the less patient portion of our people, and the alien tribes who have been injected into our country west of 96° of west longetude. Feuds are also fomented among our people by designing and rival associations of white men who desite to get possession of our lands. The ratification of the pending treaty would enable the United States to obtain control in a fair and honorable manner of all the lands ceded by its provisions and would give perfect satisfaction to all of our people except, perhaps, the designing few who may wish to revive the ancient carnival of blood amongst us.

Moreover our pending treaty proposes measures by which all conflicting interests between railroads comtemplating the running of lines through our contry, under the provisions of the treaty of 1866, may be reconciled in such a manner as to comply with the terms of the said treaty, as well as with the act of Congress of 1866 known as the compromise act in reference to railroads running through the Indian territory from north to south.

On the memorable day when the actual President of the United States was installed as the Chief Executive of the Great North American Republic, we hailed with pride and satisfaction the announcement of the POLICY which would govern his intercourse with other Peoples. We recognized in those declarations, and in the well-known character of the President by whom they were made, the *Ægis* under which our weak and dependent people would find shelter and protection, and we appeal to you, sir, with confidence and strong hope, to protect us in our just rights from the lawless spirit abroad in the land; which, regardless of solemn Treaty stipulations would despoil us of our country. We offer the Cherokee Treaty now pending before the Senate, as an easy, and the best, solution of the difficulties in which we are involved, though not by any act of our own, but by the acts of your Government and of your fellow citizens. We submit that justice, due regard for the national honor, true economy, and a sound policy, not to speak of the interests of our unfortunate people, as well as of other Indians, require the speedy ratification and execution of that treaty.

If, however, the Senate should fail to recognize the importance of ratifying the treaty, we can only appeal to the strong arm of your Government to give effect to those treaties heretofore made with us, and to protect us from the encroachments of citizens of the United States, as well as from the intrusion of alien Indian tribes. The treaties require this; your own declarations before the vast assemblage of your countrymen who attended your inauguration, require it; justice, good conscience, and every obligation, moral and legal, demands it.

We are now at peace amongst ourselves and with our neighbors, and it is our earnest desire so to remain. But weak as we are, reduced in numbers though we be, the ancient spirit of independence still animates our bosoms; and though we may not be able to maintain our rights by force, we know, at least, how to die in defence of those rights.

We solemnly appeal to you, sir, as the political father of our people, to interpose in our behalf, and admonish the Senate of the importance of ratifying the Cherokee treaty now before it, and thus avert the evils which threaten us. as well as the dishonor which, otherwise, must ultimately fall upon your own Government, should it by neglect of a

self-evident policy toward the Indian nations bring about wars between them and the frontier settlers, as well as amongst the Indians themselves. This we firmly believe would be the result, should no steps be taken by the United States for the permanent pacification of the Indian tribes, and the repression of the encroachments of the border settlers. But we indulge the pleasing hope, sir, that you will lend the influence of your great name and exalted position to the cause of peace, justice, and humanity. That you may do so is our most respectful, earnest prayer.

L. DOWNING,
P. C Cherokee Nation.
H. D. REESE,
Chairman of Delegation.
W. P. ADAIR,
SAM'L SMITH,
ARCHIE SCRAPER,
J. P. DAVIS,
Cherokee Delegation.

No. 18.

ARGUMENT of the Hon. James R. Doolittle, submitted by him as of Counsel for the Cherokee Nation to the Senate Committee of Indian Affairs, Washington, D. C., April, 1869.

MR. CHAIRMAN AND GENTLEMEN OF THE COMMITTEE ON INDIAN AFFAIRS:

Since leaving the Senate, the delegation of the Cherokees, like that of the Choctaws, have insisted that I should, as counsel for them, present their case to the consideration of this committee. I have consented upon the same conditions mentioned in my argument in behalf of the Choctaws.

Allow me, gentlemen, to say it is with deep and peculiar interest that I assume the relation of counsel in behalf of any of the Indian tribes. It may grow out of the fact that for twelve years, during the whole period of my public service, I have been a member, and much of the time chairman of that committee of the Senate having principal charge of their affairs. It has inspired in my breast the same feelings which a guardian entertains for his ward. It may, in some measure, grow out of the fact that my position compelled

me to give more attention, and to acquire more knowledge of their affairs than other members of the Senate, not upon this committee, (and who were for the most part engrossed by the consideration of other important questions,) could possibly do. It probably grows out of both. One thing is certain, and this committee will pardon me for expressing it: I enter upon the discharge of the new duties imposed upon me *as counsel* with great interest; above all, with the earnest wish to secure a hearing for them. Simple justice is all I would ask for them, and that they should have. I do not share in the fears of those who say the Government is willing to them injustice because it is strong and they are weak and wholly within its power, but I confess to having a profound apprehension that they may not be able, in the midst of the other exciting topics of the day, to hold the attention of the Senate long enough to hear their case and to form a judgment upon it.

For them, as it seems to me, the first great point to be attained is:

A fair and patient hearing.

The case of the Cherokees is this:

Their country is one of the very best comprised within our vast territorial limits.

It was held by them (the greater and more valuable portion of it) by title in fee simple. It was large enough to sustain five millions of white people, and was occupied by only eighteen to twenty thousand Indians.

It was large enough to hold the civilized and many of the half civilized tribes east of the Rocky Mountains.

Many Indian tribes held reservations in the State of Kansas. The policy of withdrawing the Indians from the white settlements is a very old one—going back to the administration of General Jackson. For a long time the United States have sought to settle other tribes in the Cherokee country. But the chiefs of that tribe were able and strong men. They felt their power and were determined to assert and maintain exclusive jurisdiction over all their territory.

They quietly, yet firmly, resisted all attempts, by new treaties, to open their territory for the settlement of other tribes, unless upon such conditions as should merge the other tribes into their nation, thereby becoming Cherokees, and thus surrendering their tribal character, and even their names, the last thing to which they would assent.

And, gentlemen, but for the fact that they became involved in the late civil war, I seriously question whether it would have been possible to induce the Cherokee Nation to open its territory to other Indians upon any reasonable terms.

But the war changed the situation. It very much weakened them. At war amongst themselves, and having at one time been compelled by military necessity to make an alliance with the Confederates, they lost the moral power to resist the cherished policy of the United States. They were placed under such moral obligations to the Government, to say nothing of the military necessities of their position, that they were constrained to yield the point, and they consented at last to the important treaty of July, 1866.

The main features of that treaty may be summed up in two things:

I. To make peace with each other, and with the United States; and

II. To open the Cherokee Territory to the settlement of other Indian tribes.

The importance and wisdom of that treaty in the then existing condition of affairs can hardly be doubted; because it did make peace among them—a peace more perfect than the most sanguine then hoped to attain. Indeed, the treaty of 1866 must be changed in order to provide for that complete state of harmony and friendly feeling which now exists, but which a feud of forty years standing, and the excited passions of a fierce and bloody civil war just closed, seemed then to make impossible.

Their situation of perfect peace demands a perfect and universal amnesty among themselves. It also demands the immediate abolition of those separate and *quasi* hostile jurisdictions within their Territory, provided for by the treaty of 1866.

I.

We maintain, in the first place, this of itself makes a new treaty absolutely necessary.

In the pending treaty, as proposed to be amended, in my judgment, is to be found all that is necessary or desirable on that subject. I do not dwell upon the details.

But, secondly, the strongest possible reason for confirm-

ing the pending treaty, with proper amendments, is the overwhelming fact that the United States, in earnest pursuit of its long-standing policy, namely: To locate other Indians in the Cherokee country, have, in fact, already appropriated to the exclusive use of other Indian tribes the whole of the vast domain of the Cherokee Nation west of the 96th meridian longitude.

Between that meridian and the Arkansas river, all has been appropriated to the Osages; and all west of the Arkansas has been set apart as a reservation for the Cheyennes, Arrapahoes, Kiowas, and Comanches. A vast region, embracing a Territory sixty miles in width and more than two hundred and fifty miles in length—15,000 square miles—more than 9,000,000 of acres. Besides appropriating all this, to which their title seems absolute, the United States have appropriated also their possessory title to a "Western Outlet" in New Mexico and the "Pan-handle" of Texas, estimated to contain as many millions of acres more.

By the treaty of 1866, it is true, the United States acquired the right to settle other Indian tribes upon these Territories of the Cherokees, but upon express condition that they were to be paid for their lands, and if the tribes to be settled there could not agree with the Cherokees upon the price they were to pay for the lands, the question of amount should be determined by the President.

The treaty evidently contemplated settling in the Cherokee country only those tribes which had some fund or annuity with which to pay the Cherokees a reasonable price for their lands.

But the United States have already appropriated the greater amount of the Cherokee lands to tribes which have no funds whatever—to the wildest tribes of the plains, whose only food is flesh, and who are by no means in a condition yet to become very acceptable as near neighbors of civilized people.

Under these circumstances, gentlemen, what shall the United States do? What is the least which in honor they can do? Pay for the lands—pay for them! They have taken, without consideration, all west of the Arkansas and the 98th meridian. They have put into possession of it the wild tribes who have nothing with which to pay, and to all this there is and there can be but one honorable solution, and that is to pay a fair and reasonable compensation.

But let me inquire how is it with the lands between the 96th and 98th meridians? They are still more valuable for use and settlement. The pending treaty with the Osages appropriates to them all west of the 96th meridian and east of the Arkansas river.

Whatever may be the action of the Senate upon that treaty there is no reason for believing that those lands are not lost to the Cherokees. Under this or some other treaty the Osages will occupy that portion of the Cherokee country forever. The reasons for that opinion are as follows:

I.

The law of Congress (12 vol. Statutes 793) of March 3d, 1863, authorized the President to treat with all the tribes in Kansas, for the extinction of their title and for their removal to the Indian Territory. This embraced the Osages, and the 5th section authorized him to enter into treaties to secure titles in the Indian Territories for the Indians to be removed from Kansas. If there be any such thing as a fixed policy in relation to the Indians of Kansas, or other States rapidly filling up with white settlers, it is the very thing contained in this Act of Congress. The removal of the Osages to the Cherokee country may be looked upon, already as a fixed fact. Indeed, the Osages in large numbers are already there.

Compared with the Cherokees, the Osages are not yet well civilized. The sense of property, and especially the right of property in another, is not yet so highly cultivated as to prevent many among them from taking the horses of the Cherokees wherever they can find them.

This propensity to steal horses threatens trouble between the Osages and the Cherokees; and when you take into account the fact that the Osages are already occupying some of the best lands of the Cherokees without pay, you can well understand the earnestness of the Cherokees to come to a final understanding with the United States about the price of their territory. And, is it not wiser and better for both parties, and is it not more conducive to the peace of the Indian Tribes, that the whole question should now, at once and for all be settled, and the price of their lands agreed upon? Nothing seems clearer in my judgment.

It will be remembered the price agreed upon in the treaty

between the Commissioner and the Cherokees is $3,500,000. During the last Congress, while acting upon the Committee, this matter was referred to me as a sub-committee. After procuring estimates of the amount of lands covered by the treaty, it was my deliberate opinion that the sum of $3,000,000 was a fair valuation, including all their lands, the Kansas "Strip," and all West of the 96th Meridian.

The Delegates of the Nation thought my estimate too low, and it is just to them to say, that in their opinion the sum of $3,500,000 is not too high a price for such a vast domain—larger than several of the States. But it is due to myself to say, that, having formed that opinion when looking into the matter under the responsibilities of my official position, I can not allow myself, as counsel now, even to re-open the question in my own mind.

I have thus briefly stated the two main reasons why the treaty of July, 1866, is no longer sufficient to meet the present situation of affairs; and

Why the pending treaty properly amended should be acted upon by the Senate.

I shall not go over all the other clauses of the treaty, nor the proposed amendments. Two positions, it seems to me, should secure the action of the Senate as early as possible:

I.

Firstly, their situation amongst themselves demands it to secure universal amnesty and the abolition of divided and *quasi* hostile jurisdictions.

II.

Secondly. The United States have already appropriated to other Indians all the territory of the Cherokees west of the 96th meridian, and the mode of payment under the treaty of 1866 has become impracticable. Citizens of the United States have seized upon the "strip" in Kansas and are encroaching upon the Cherokee lands immediately south of the State line, thus rendering border collisions possible.

The only solution is to agree upon the sum to be paid under the provisions of the pending treaty, or as it may be amended by the Senate.

III.

Since the treaty was transmitted to the Senate by the President, the Cherokee delegation have submitted an amendment, proposing to exchange, not exceeding $1,000,000 of the United States registered stocks, bearing five per cent. interest, to which they may be entitled under the terms of the treaty, for the first mortgage bonds of such railroad company, not exceeding $12,000 per mile, as shall first push a road through their country in a southerly direction from the Kansas line.

There can be no objection to that, provided it be so amended as to make the security perfect. On the contrary, if such a railroad were constructed it would add very much to the value of the Cherokee country, and give to that people, among the most advanced of all the Indian nations, that which has become a necessity to modern civilization.

No. 19.

WASHINGTON, D. C., *April* 22*d*, 1869.

To COL. DOWNING,

And other Cherokee Delegates in Washington:

GENTLEMEN: Please convey to your Nation my sincere wishes for their good health and prosperity. Communicate to them my regret that no satisfactery adjustment was obtained in your matters, between Congress and yourselves. Let me advise you and your people to let this cause no breach of the good feeling which now happily exists between the United States and most of the Indian tribes. I can assure you and your people that the President is well-inclined towards all the Indians, and will do all he can to induce Congress and the country to award to the Indians their just rights.

Yours truly,

E. S. PARKER.

No. 20.

EXECUTIVE MANSION,
WASHINGTON D. C., *April* 23, 1869.

COMMISSIONERS OF CHEROKEES:

DEAR SIRS: It is cause of regret that Congress has not been able to adjust the various matters between the Government of the United States and the Cherokee Nation on the basis of justice and right to both parties. I trust, however, that this failure may not prove a source of trouble to your nation, but that the peace now prevailing may continue. As President, it will be my endeavor to preserve that peace and to do all in my power, believing that Congress will cordially co-operate with me to see that you receive all just dues.

With respect,
Your obedient servant,
U. S. GRANT.

No. 21.

WASHINGTON CITY, D. C., *April* 22*d*, 1869.

To MESSRS. LEWIS DOWNING, *Chief of the Cherokee Nation*, H. D. REESE, *Chairman*, WM. P. ADAIR, *et al.*, *National Delegates:*

GENTLEMEN: I regret to be compelled to inform you that the treaty recently negotiated between the United States and the Cherokee Nation, cannot probably be disposed of by the Senate this session. This regret is deepened from the consideration of the great earnestness, industry, and ability manifested by you in pressing the claims of your people on the attention of the Committee of the Senate on Indian Affairs, and on the attention of all influential Senators. In returning to your homes and your people, you have the consciousness of having done all that is possible for any to do, to secure attention to the business entrusted to your management, and I feel authorized to assure you that in all human probability, that the adverse circumstances preventing favorable action, at this session, will have so far changed

as to enable the Senate to settle your business at the coming session of Congress.

With great respect, yours, &c.,

JAMES HARLAN,

Chairman Committee on Indian Affairs.

No. 22.

WASHINGTON, *April 26th*, 1869.

GEN. ELY S. PARKER,

Commissioner of Indian Affairs, Washington, D. C.

SIR: I have information from reliable sources that citizens of the United States are intruding upon the Cherokee lands south of the Kansas line and adjoining what is known as the "Cherokee strip" in that State.

The Cherokees regard this with alarm, in view of the encouragement lately given in Congress to the idea that "Indian lands" are "public lands," subject to survey and sale, and to the pre-emption homestead law as applicable to the public domain of the United States; and I feel it my duty to call your attention to the violation of the treaties and of the law of the United States enacted for the regulation of trade and intercourse with the Indian tribes, and to preserve peace on the frontier by those border settlers; and to request that you will take such steps as may, in your judgment, be proper to remove all intruders from our lands and prevent future encroachments.

I have the honor to be, sir,

Very respectfully, your obedient servant,

LEWIS DOWNING,

Chief of the Cherokee Nation.